



भारत का राजपत्र The Gazette of India

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नई दिल्ली, शनिवार, नवम्बर 23, 1991/अग्रहायण 2, 1913

No. 47] NEW DELHI, SATURDAY, NOVEMBER 23, 1991/AGRAHAYANA 2, 1913

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (II)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministry of the Government of India
other than the Ministry of Defence

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 31 अक्टूबर, 1991

का. आ. 2890.-केन्द्रीय सरकार, अखिल भारतीय सेवाएं
अधिनियम, 1951 (1951 का 61) का धारा 3 की उप-धारा (1)
द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा संबंधित राज्य सरकारों
से परामर्श के पश्चात् अखिल भारतीय सेवाएं (मृत्यु तथा सेवा निवृत्ति
प्रसुविधाएं) नियमावली, 1958 में और आगे संशोधन करने के लिए
निम्नलिखित नियम बनाती हैं, अर्थात्:-

1. (1) इन नियमों का नाम अखिल भारतीय सेवाएं (मृत्यु तथा
सेवा निवृत्ति प्रसुविधाएं) तोसरा संशोधन नियमावली, 1991 है।

(2) ये नियम सरकारी राजपत्र में इनके प्रकाशन की तारीख में
प्रवृत्त होंगे।

2. अखिल भारतीय सेवाएं (मृत्यु तथा सेवानिवृत्ति प्रसुविधाएं)
नियमावली, 1958 में नियम 22-ख के उपनियम (14) में अनुवर्द्ध (i)
और (ii) में निम्नलिखित शब्द विलोपित किए जाएं, अर्थात्:-

“कमार्थ कि ऐसा विवाह सेवा के सदस्य की सेवानिवृत्ति से पूर्व हुआ हो”।

[संख्या 25011/40/90-अ. भा. से. (ii)]

पी. एन. नारायणन, निदेशक

टिप्पणी:- मूल नियम दिनांक 18 अगस्त, 1958 को भारत के असाधारण
राजपत्र, 1958 (असाधारण) भाग-II, खंड 3 उप खंड (i)
में अधिसूचना सा. का. नि. संख्या 728 द्वारा प्रकाशित किए
गए थे, तत्पश्चात् निम्नलिखित अधिसूचनाओं द्वारा संशोधित किए
गए :-

क्र.सं. सा. का. नि. सं. दिनांक

1.	526	4-04-64
2.	527	3-04-65
3.	528	3-04-65
4.	529	3-04-65
5.	572	17-4-65
6.	215	12-2-65
7.	1915	17-2-66
8.	560	30-3-68
9.	687	6-07-74

1	2	3
10.	755	20-7-74
11.	946	7-09-74
12.	27(ई)	24-1-75
13.	724	14-6-75
14.	2264	23-8-75
15.	2635	8-11-75
16.	2030	20-12-75
17.	128	31-1-76
18.	196	14-2-76
19.	316	6-03-76
20.	504	10-4-76
21.	758	5-06-76
22.	757	5-06-76
23.	1182	14-8-76
24.	1765	25-12-76
25.	579	7-05-77
26.	830	2-07-77
27.	831	2-07-77
28.	1598	26-11-77
29.	1700	24-12-77
30.	252	18-2-78
31.	253	18-2-78
32.	460	8-04-78
33.	924	22-07-78
34.	922	22-07-78
35.	214	20-01-79
36.	161	03-02-79
37.	373	03-02-79
38.	1151	15-09-79
39.	1291	22-10-79
40.	512	10-05-80
41.	545	17-05-80
42.	546	17-05-80
43.	978	27-09-80
44.	248	07-03-81
45.	276	14-03-81
46.	705	01-08-81
47.	293	09-01-83
48.	557	30-07-83
49.	712	01-10-83
50.	33	21-01-84
51.	559	15-06-85
52.	913	31-03-85
53.	275	22-05-87
54.	343	30-04-88
55.	587	16-07-88
56.	91	25-02-89
57.	420	21-02-90
58.	57	26-01-91
59.	101	16-02-91

MINISTRY OF PERSONNEL, P. G. & PENSIONS

(Department of Personnel & Training)

New Delhi, the 31st October, 1991

S.O. 2890.—In exercise of the powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951

(61 of 1951), the Central Government, after consultation with the Governments of the states concerned, hereby makes the following rules further to amend the All India Services (Death-cum-Retirement Benefits) Rules, 1958, namely :—

1. (1) These rules may be called the All India Services (Death-cum-Retirement Benefits) third Amendment Rules, 1991.

(2) They shall come into force on the date of their publication in the official Gazette.

2. In the All India Services (Death-cum-Retirement Benefits) Rules 1958, in rule 22-B, in sub-rule (14), in clauses (i) and (ii) the following words shall be omitted, namely :—

Provided the marriage took place before the retirement of the member of the service".

[No. 25011/40/90-AIS(II)]

P. N. NARAYANAN, Director

Note—Principle rules were published vide Notification No. GSR 72 dated 18-8-1958 Gazette of India 1958 (Extraordinary) Part-I) Section 3, sub-section (i). They have subsequently been amended by the following notification :

Sl. No.	G.S.R. No.	Dated
1.	526	4-04-64
2.	527	3-04-65
3.	528	3-04-65
4.	529	3-04-65
5.	572	17-04-65
6.	215	12-02-65
7.	1915	17-02-66
8.	590	30-30-68
9.	687	06-7-74
10.	755	20-07-74
11.	946	07-09-74
12.	27(E)	24-01-75
13.	724	14-06-75
14.	2264	23-08-75
15.	2635	08-11-75
16.	2030	20-12-75
17.	128	31-01-76
18.	196	14-02-76
19.	316	06-03-76
20.	504	10-04-76
21.	758	05-06-76
22.	757	05-06-76
23.	1182	14-08-76
24.	1765	25-12-76
25.	579	07-05-77
26.	830	02-07-77
27.	831	02-07-77
28.	1598	26-11-77
29.	1700	24-12-77
30.	252	18-02-78
31.	253	18-02-78

1	3
32. 469	08-04-78
33. 924	22-07-78
34. 922	22-07-78
35. 214	20-01-79
36. 161	03-02-79
37. 373	03-02-79
38. 1151	15-09-79
39. 1291	22-10-79
40. 512	10-05-80
41. 545	17-05-80
42. 546	17-05-80
43. 978	27-09-80
44. 248	70-03-81
45. 276	14-03-81
46. 705	01-08-81
47. 293	09-01-83
48. 557	30-07-83
49. 712	01-10-83
50. 33	21-01-83
51. 559	15-06-85
52. 813	31-08-85
53. 275	22-05-87
54. 343	30-04-88
55. 567	16-07-88
56. 91	25-02-89
57. 420	21-02-90
58. 57	26-01-91
59. 101	16-02-91

Madhya Pradesh vide order of the Government of Madhya Pradesh No. 6989/6315/91/B(I)/II dated 31-10-91, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Madhya Pradesh for the investigation of the offences-punishable u/s 302 of Indian Penal Code (Act 45 of 1860) and section 25, 27 Arms Act 1959 (Act 54 of 1959) and any attempts, abetments and conspiracy in relation to or in connection with the said offences or any other offences committed in the course of the same transaction arising out of the same facts in regard to Crime No. 580/91 of Police Station Bhilai Nagar, District Durg (M.P.) relating to the murder of late Shri Shankar Guha Niyogi.

[No. 228/53/91-AVD-II]

A. C. SHARMA, Under Secy.

वित्त मंत्रालय

(आर्थिक कार्य विभाग)

(बुकिंग प्रभाग)

नई दिल्ली, 31 अक्टूबर, 1991

का.भा. 2892 :- बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार भारतीय रिजर्व बैंक की सिफारिश पर एतद्वारा घोषणा करती है कि उक्त अधिनियम की धारा 31 के उपबन्ध पंजाब को-ऑपरेटिव बैंक लि. पर 31 अक्टूबर, 1991 तक उस सीमा तक लागू नहीं होंगे, जहां तक इस बैंक से विनांक 31 मार्च, 1991 तक की स्थिति के अनुसार, लेखा परीक्षक को रिपोर्ट सहित लेखाओं और तुल्य पत्र की निश्चित ढंग से प्रकाशित करने और उसकी तीन प्रतियां भारतीय रिजर्व बैंक को 30 सितम्बर, 1991 तक की बराबरी हुई अप्रति के अन्दर-अन्दर विवरणियों के रूप में प्रस्तुत करने की अपेक्षा की जाती है।

[सं. एक. 15/11/91-बी.ओ. III]

आदेश

नई दिल्ली, 4 नवम्बर, 1991

का.भा. 2891:- केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 6 के के सचिव पठित, धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए पुलिस स्टेशन भिलाई नगर, जिला दुर्ग (म.प्र.) के अस्तर्गत रजिस्टर किए अपराध सं. 580/91, स्वर्गीय श्री शंकर गुहा नियोगी की हत्या के बाबत, भारतीय दंड संहिता (1860 का 45) की धारा 302 और भारतीय शस्त्र अधिनियम 1959 (1959 का 54) की धारा 25 व 27 के अर्थात् दण्डनीय अपराधों और उक्त अपराधों और उन्हीं तथ्यों से उत्पन्न होने वाले ऐसे ही सच्यवहार के अनुक्रम में किए गए किन्हीं अन्य अपराधों के संबंध में या उनसे संशक्त प्रयत्नों, दुष्प्रेरणों और पद्धतियों के अन्वेषण के लिए मध्य प्रदेश सरकार के सरकारी आदेश संख्या 6989/6315/91/बी (आई)/II दिनांक 31-10-91 के तहत मध्य प्रदेश सरकार की सहमति से दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तारण संपूर्ण मध्य प्रदेश राज्य पर करती है।

[संख्या 228/53/91-ए.बी.सी.-(11)]

ए. सी. शर्मा, अवर सचिव

ORDER

New Delhi, the 4th November, 1991

S.O. 2891.—In exercise of the powers conferred by sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act 25 of 1946), the Central Government with the consent of Government of

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 31st October, 1991

S.O. 2892.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendation of Reserve Bank of India, hereby declares that the provisions of Section 31 of the said Act shall not apply to the Punjab Co-operative Bank Limited upto 31st October, 1991 in so far as it is required to publish the accounts and Balance Sheet as at 31st March, 1991 together with Auditor's Report in the prescribed manner and submit three copies thereof as returns to the Reserve Bank within the extended period upto 30th September, 1991.

[No. F. 15/11/91-B.O.III]

नई दिल्ली, 7 नवम्बर, 1991

का.भा. 2893.— बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा घोषणा करती है कि उक्त अधिनियम की धारा 9 के उपबन्ध, बैंक आफ मजुरा लि पर, तंजौर जिले के ग्राम बिट्टाकुडी, तमिलनाडु में उसके द्वारा धारित 2 एकड़ 13 सेंटेस, जिसकी आर एस नं. 212/4 है, की भू-सम्पत्ति पर 10 जून, 1991 तक की अप्रति तक लागू नहीं होंगे।

[सं. 15/6/91-बी.ओ.-III]

के.के. मंगल, अवर सचिव

New Delhi, the 7th November, 1991

S.O. 2893.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of Section 9 of the said Act shall not apply to the Bank of Mudura Ltd., for a period upto 10th June, 1992 in respect of the landed property bearing R. S. No. 212/4 measuring 2 acres and 13 cents held by it at Thittakudi village in Tanjore District, Tamil Nadu State.

[No 15/6/91-BO-III]

K. K. MANGAL, Under Secy.

3. बोल्टसा नियामक।
4. अग्रदीप समंजन।
5. फ्लेसर यूनिट।
6. वितरक।
7. वाइपर समंजन।
8. विद्युत् हार्न।

[फा.सं. 5(16)/88-ई आई एण्ड ईपी]

ए. के. चौधुरी, निदेशक

वाणिज्य मंत्रालय

नई दिल्ली, 6 नवम्बर, 1991

का.आ. 2894—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स लुकास टीवीएस लिमिटेड, पाडी, मद्रास-600050 में निर्मित नीचे दिये गये आटो-मोबाइल के पुर्जों और संघटकों का निर्यात से पूर्व निरीक्षण करने के लिये मैसर्स लुकास टीवीएस लिमिटेड, को जिनका रजिस्ट्रीकृत कार्यालय, 37, माउंट रोड, मद्रास-600006 में है, 17 दिसम्बर, 1991 से तीन और वर्ष की अवधि के लिये का.आ. 1484 तारीख 16 मई, 1991 के अनुसार अधिसूचित भागों के अधीन रहते हुए, अभिकरण के रूप में मान्यता देती है।

1. स्टार्टर मोटर।
2. डायनेमो।

MINISTRY OF COMMERCE

New Delhi, the 6th November, 1991

S.O. 2894.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises for a further period of three years with effect from 17th December, 1991, M/s. Lucas TVS Limited, having their registered office at 37, Mount Road, Madras-600006, as the agency for inspection of Automobile Spares and Components as given below, manufactured at M/s. Lucas TVS Limited, Padi, Madras-600050, prior to export, subject to the conditions notified vide S.O. 1484 dated 16th May, 1981.

1. Starter Motor
2. Dynamo
3. Voltage Regulator
4. Head Light Assembly
5. Flasher Unit
6. Distributor
7. Wiper Assembly
8. Electric Horn.

[F. No. 5(16)/88-EI&EP]

A. K. CHAUDHURI, Director

आद्य एवं नागरिक पूर्ति मंत्रालय

(नागरिक पूर्ति विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 29 अक्टूबर, 1991

का.आ. 2895:—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस/जिन लाइसेंस (सों) का/के विवरण नीचे दिया गया है/दिए गए हैं, वह/वे उसके/उनके सामने दी गई तिथि से रद्द कर दिया गया है/दिए गए हैं।

अनुसूची :

क्र.सं.	लाइसेंस संख्या तथा दिनांक	लाइसेंसधारी का नाम व पता	रद्द लाइसेंस के अन्तर्गत वस्तु/प्रक्रम तथा सम्बन्ध भारतीय मानक	रद्द किए जाने की तारीख
(1)	(2)	(3)	(4)	(5)
सीएम/एल	2021523	वि बम्बई ऑयल इंडस्ट्रीज लि., साल बहादुर शास्त्री मार्ग, बंधप, बम्बई-400078 (महाराष्ट्र) कार्या : कमयूर हाउस, 281—87, मारसी मेहता स्ट्रीट, बम्बई-400 009 (महारा.)	सड़क के लिए बिटुमेन इमलेशन (घनायन टाइप) एमएस टाइप आईएस : 8887—1978	1989-09-0

[फे.प्र.वि. 55:2021523]

एस. सुब्रह्मण्यन, अपर महानिदेशक

MINISTRY OF FOOD AND CIVIL SUPPLIES

(Department of Civil Supplies)

BUREAU OF INDIAN STANDARDS

New Delhi, the 29th October, 1991

S.O. 2895.—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (notification) Regulation 1988, the Bureau of Indian Standards hereby notifies that the licence(s) particulars of which is/are given below has/have been cancelled with effect from the date indicated:

THE SCHEDULE

Licence No. (EM/L-)	Name and Address of the licensee	Article/Process with relevant Indian Standard covered by the licence cancelled	Date of Cancellation
1	2	3	4
CM/L-2021523	The Bombay Oil Industries Ltd., Lal Bahadur Shastri Marg, Bhandup, Bombay-400 078 (MS) having their office at ; Kanmoor House, 281-87, Narsi Natha Street. Bombay-400 009 (MS).	Bitumen Emulsion for Roads (Cationic Type) MS Type IS : 8887-1978	1989-09-01

[No. CMB/55 : 2021523]

S. SUBRAHMANYAN, Addl. Director General

कृषि मंत्रालय

(कृषि अनुसंधान तथा शिक्षा विभाग)

नई दिल्ली, 15 अक्टूबर, 1991

का.प्र. 2896:- केन्द्रीय सरकार, कृषि मंत्रालय, अनुसंधान तथा शिक्षा विभाग राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उपनियम (4) के अनुसरण में एतद्वारा भारतीय कृषि अनुसंधान परिषद् के संस्थान केन्द्रीय कृषि अनुसंधान संस्थान अण्डमान और निकोबार द्वीप समूह पोर्ट ब्लेयर (भारत) जिनके 80% से अधिक कार्यवाहियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[फा.सं. 13-11/91-हिन्दी]

हजारी लाल, अवर सचिव

शहरी विकास मंत्रालय

(मुद्रण निदेशालय)

नई दिल्ली, 20 अगस्त, 1991

का.प्र. 2897:- नाशिक, कोयंबटूर, कोराटी, अलीगढ़ नीलोखेड़ी, संज्ञागच्छी (हाबडा), मिर्जा रोड, नई दिल्ली, रिंग रोड, नई दिल्ली, फरीदाबाद, गंगटोक स्थित भारत सरकार मुद्रणालयों में नियोजित अधिकाधिक को सरकारी भाषा अनुसंधान नियम, 1972 और विनांक 25-1-80 की अधिसूचना सं. ए.प्र.ओ. 772 से मंसूर, भुवनेश्वर, चण्डीगढ़, स्थित भारत सरकार पाठ्य-पुस्तक मुद्रणालयों में विस्तारित के अनुसरण में मुद्रण निदेशक 1-1-92 से प्रारम्भ और 31-12-1993 को समाप्त अवधि के लिए अगला आवंटन वर्ष एतद्वारा अधिसूचित करते हैं।

[सं. 52/40/91-प्रशा. 4]

राजेश सिंह, उप-निदेशक (प्रशा.)

MINISTRY OF AGRICULTURE

(Deptt. of Agri. Res. & Education)

New Delhi, the 15th October, 1991

S.O. 2896.—The Central Government, Ministry of Agriculture, Deptt. of Agricultural Research & Education hereby declares the Central Agricultural Research Institute Andaman and Nicobar Group of Islands, Port Blair (ICAR) where more than 80 per cent of staff have acquired the working knowledge of Hindi, as notified office in pursuance of Sub-Rule 4 of Rule 10 of the official Language (use of official purpose of the union) Rule 1976.

[F. No. 13-11/91-Hindi]

HAZARI LAL, Under Secy.

MINISTRY OF URBAN DEVELOPMENT

(Directorate of Printing)

New Delhi, the 20th August, 1991

S.O. 2897.—In pursuance of Rule 2(b) of the Allotment of Government residence to officers employed in Government of India Presses, located at Nashik, Coimbatore, Koratty, Aligarh, Nilokheri, Santragachi (Howrah) Minto Road, New Delhi Ring Road, New Delhi, Faridabad, Gangtok Rules, 1972 and extended to Govt of India Text Books Presses, Mysore, Bhubaneswar and Chandigarh, vide notification No. S.O. 772, dated 25-1-80, the Director of Printing hereby notifies the period commencing on the 1st day of January, 1992 and ending on the 31st day of December, 1993 as the period of next allotment years.

[No. 52/40/91-A.IV]

RAJINDER SINGH, Dy. Director (Admn.)

(दिल्ली प्रभाग)

नई दिल्ली, 30 अक्टूबर, 1991

का.आ. 2898.—यतः कतिपय संशोधन, जिन्हें केन्द्रीय सरकार नीचे बर्णित क्षेत्रों के बारे में दिल्ली बृहद् योजना/क्षेत्रीय विकास योजना में प्रस्तावित करती है, जो दिल्ली विकास अधिनियम, 1957 (1957 का 61वाँ) की धारा 44 के अनुसार दिनांक 3-8-91 के नोटिस सं. एफ. 16(8) 85/एम.पा. द्वारा प्रकाशित किए गए थे, जिसमें उक्त नियम की धारा 11-क की उपधारा (3) में अवेक्षित आपत्तियाँ/सुझाव, उक्त नोटिस की तारीख से 30 दिन की अवधि के भीतर आमंत्रित किए गए थे।

और यतः उक्त प्रस्तावित संशोधनों के बारे में कोई आपत्तियाँ और सुझाव प्राप्त नहीं हुए, और यतः केन्द्रीय सरकार ने दिल्ली की बृहद् योजना/क्षेत्रीय विकास योजना की संशोधित करने का निर्णय लिया है। अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 11-क की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत के राजपत्र में इस अधिसूचना के प्रकाशन का तारीख से दिल्ली की उक्त बृहद् योजना में एतद्वारा निम्नलिखित संशोधन करती है।

"जोन डी-13 (चाणक्यपुरी क्षेत्र) के अन्तर्गत आने वाले और उत्तर-पश्चिम में 60.96 टर सरदार पटेल मार्ग (2200 फुट माप-धिकार), दक्षिण-पश्चिम में व्यवसायिक उपयोग (होटल मीर्य गोरटम), दक्षिण-पूर्व और उत्तर-पूर्व में आवासीय उपयोग (रेलवे कालोनी) एवं सरकारी स्टाफ क्वार्टर्स से घिरे हुए लगभग 4.035 हेक्टेयर (10 एकड़) क्षेत्र का भूमि उपयोग "मनोरंजन/स्वयं उपयोग" से बदलकर "सरकारी उपयोग" में किया जाना प्रस्तावित है।"

[स. के.-13011/1/90/डी.जी. 5ए/आर्.डी.]

अर्जुन देव, अधीक्षक सचिव

(Delhi Division)

New Delhi, the 30th October, 1991

S.O. 2898.—Whereas certain modifications, which the Central Government proposes to make in the Master Plan for Delhi/Zonal Development Plan regarding the areas mentioned hereunder, were published with Notice No. F. 16(8)/85-MP dated 3-8-91 in accordance with the provisions of section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections/suggestions as required by sub-section (3) of Section 11-A of the said Act, within thirty days from the date of the said notice,

And whereas no objections and suggestions have been received with regard to the said proposed modification, and whereas the Central Government have decided to modify the Master Plan for Delhi/Zonal Development Plan. Now therefore, in exercise of the powers conferred by sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modification in the said Master Plan for Delhi with effect from the date of publication of this Notification in the Gazette of India.

MODIFICATION :

"The land use of an area, measuring 4.035 hect. (10 acres), falling in Zone D-13 (Chanakya Puri Area) and bounded by Sardar Patel Marg (200' R/W) in the North-West, Commercial use (Hotel Maurya Sheratan) in the South-West, residential use (railway colony and Govt. staff quarters) in the South-East and North-East, is changed from 'Recreational use' to 'Government Use'.

[No. K-13011/1/90/DDVA/IB]

ARJUN DEV, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 31 अक्टूबर, 1991

का.आ. 2899.—चलचित्र (प्रमाणन) नियम 1983 के नियम 9 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) के खण्ड 5 के उपखण्ड (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार श्री ए. रामकृष्णन, भा.प्र.से. (संहायक: 75) का, केन्द्रीय पतियुक्ति की शर्तों पर निदेशक के स्तर पर, केन्द्रीय फिल्म प्रमाणन बोर्ड, बम्बई में 14-10-91 (पूर्वाह्न) से प्रगते आदेशों तक प्रादेशिक अधिकारी के रूप में नियुक्त करती है।

[फा. सं. 801/9/90-एफ (सी)]

महेन्द्र सिंह सेठी, डेस्क अधिकारी

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 31st October, 1991

S.O. 2899.—In exercise of the powers conferred by sub-section (2) of Section 5 of the Cinematograph Act, 1952 (37 of 1952), read with Rule 9 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint Shri A. Ramakrishnan, IAS (MH: 75) as Regional Officer, Central Board of Film Certification, Bombay, at the level of Director as a measure personal to him on Central deputation terms, from 14-10-91 F.N. until further orders.

[F. No. 801/9/90-F(C)]

M. S. SETHI, Desk Officer

नागर विमानन और पर्यटन मंत्रालय

(नागर विमानन विभाग)

नई दिल्ली, 4 नवम्बर, 1991

का.आ. 2900.—वायु निगम अधिनियम, 1953 (1953 का 27) की धारा 8(1) के साथ पठित धारा-4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा श्री वाई.सी. दिवेश्वर को उनके कार्यभार सम्भालने की तारीख से 5 वर्ष की अवधि के लिए एयर इंडिया के अध्यक्ष एवं प्रबंध निदेशक के पद पर नियुक्त करती है। इस नियुक्ति के विस्तृत नियम और शर्तें अलग से जारी की जा रही हैं।

[फा. सं. एसी-18013/2/90-एए]

MINISTRY OF CIVIL AVIATION & TOURISM

(Department of Civil Aviation)

New Delhi, the 4th November, 1991

S.O. 2900.—In exercise of the powers conferred by Section 4 read with Section 8(1) of the Air Corporations Act, 1953 (27 of 1953), the Central Government hereby appoints Shri Y. C. Diveshwar as Chairman and Managing Director of Air India for a period of five years with effect from the date he assumes office. Detailed terms and conditions of the appointment are being issued separately.

[File No AV-18013/2/90-AA]

का.आ. 2901.—वायु निगम अधिनियम, 1953 (1953 का 27) के खंड 8(1) के साथ पठित खंड 4 में निहित शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा श्री एस.आर. गुप्ते को उनके पद का कार्यभार सम्भालने की तारीख से पांच वर्ष की अवधि के लिए एयर इंडिया के उप प्रबंध निदेशक के रूप में नियुक्त करती है। उन्हें उसी शैलियत से एयर इंडिया के मंडल में भी नियुक्त किया गया है।

[फा. सं. एसी/18013/2-90-एए]

प्रकाश चन्द, अधीक्षक सचिव

S.O. 2901.—In exercise of the powers conferred by Section 4 read with Section 8(1) of the Air Corporations Act, 1953 (27 of 1953), the Central Government hereby appoints Shri S. R. Gupta as Deputy Managing Director of Air India for a period of five years from the date he assumes charge of the post. He is also appointed Director on the Board of Air India in that capacity.

[F. No. AV.18013/2/90-AA]

PARKASH CHANDRA, Under Secy.

श्रद्धा संज्ञासूचक

नई दिल्ली, 24 अक्टूबर, 1991

का.प्र. 2802.—औद्योगिक विवाद अधिनियम, 1947¹ (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी. एम. को रामकानाली कोलियरी, एरिया नं. 4 के प्रबन्धन से संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-10-91 को प्राप्त हुआ था।

MINISTRY OF LABOUR

New Delhi, the 24th October, 1991

S.O. 2902.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Ramkanali Colliery of Area No. IV of M/s. BCCL and their workmen which was received by the Central Government on 24-10-1991.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 170 OF 1985

PARTIES :

Employers in relation to the management of Ramkanali Colliery of Area No. IV of M/s. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri S. N. Goswami, Advocate.

On behalf of the employers.—Shri B. Joshi, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated, Dhanbad, the 30th September, 1991

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(147)/25-D.III (A), dated the 9th December, 1985.

SCHEDULE

"Whether the action of the management of Ramkanali Colliery of Area-IV of M/s. Bharat Coking Coal Ltd., in removing late Adri Mahatain, Smt. Jitani

Ghatwari, Smt. Sajani Manihain, Smt. Kunti Bhuini, Smt. Upasi Manihain and Smt. Jhalki Mahatain, from the rolls of the Company under Voluntary Retirement Scheme, without providing employment to their genuine dependants is justified? If not, to what relief they are entitled?"

2. In this case both the parties appeared and filed their respective W.S. documents etc. The case then proceeded along its course. Subsequently at the stage of evidence, both the parties appeared before me and filed a petition for passing 'No dispute' Award on the ground that there is no dispute existing between the employers and the sponsoring union. I heard both the parties on the said petition and I have every reason to believe that there is no dispute existing between the parties in reference.

Since there is no dispute existing between the employers and the sponsoring union, I am constrained to pass 'No dispute' Award in the reference.

B RAM, Presiding Officer

[No. L-20012(147)/85-D.III (A) 'IR (Coal-I)]

नई दिल्ली, 30 अक्टूबर, 1991

का.प्र. 2803.—औद्योगिक विवाद अधिनियम, 1947¹ (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स बी.सी.सी.एम. का कुस्तोर एरिया के प्रबन्धन से संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-91 को प्राप्त हुआ था।

New Delhi, the 30th October, 1991

S.O. 2903.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kustore Area of M/s. BCCL and their workmen which was received by the Central Government on 29-10-1991.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

Reference No. 254 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of Kustore Area of M/s. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri J. P. Singh, Advocate.
On behalf of the employers.—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 15th October, 1991

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. I-20012 (15)/87-D.III(A), dated, the 26th August, 1987.

SCHEDULE

"Whether the management of Ena Fire Project|Ena Colliery under Area VII (Kustore) of M/s. B.C.C.L. is justified in dismissing Shri Pramod Kumar Singh, Dozer Operator Ena Fire Project from service w.e.f. 12-7-86 vide their Memo. No. Ena|PD|1724 dated 12-7-86 ? If not, what relief the workman is entitled to ?"

2. As reported the most unpleasant occurrence took place on 27-2-86 at about 10.00 A.M. with Dr. R. Ojha, Senior Medical Officer, East Bhuggatdih Colliery dispensary while he was on official duty in his chamber. The concerned workman Shri Pramod Kumar Singh met the doctor in his chamber and told that his mother was ailing seriously. He also insisted upon the doctor to go to his residence but the doctor advised him to take Ambulance and bring his mother to hospital. As alleged there was hot exchange of words and the concerned workman was stated to have become very furious and he hurled filthy abuses upon the doctor caught hold of him by the collar of his shirt and wanted to assault him with lathi. The concerned workman was pushed out of the chamber. At this stage I would like to mention that the concerned workman was a Dozer Operator of Ena Fire Project in Ena Colliery and his father Shri K. P. Singh was an Overman of East Bhuggatdih colliery. The doctor submitted report (Ext. M-6) to the Agent, East Bhuggatdih colliery for necessary action and also to provide him security for his life. That written report was the basis for issuance of chargesheet Ext. M-1. The chargesheet dated 27-2-86 was issued alleging that the concerned workman abused the doctor assaulted him by catching hold of the collar of his shirt and also tried to beat him with lathi. The action of the concerned workman was stated to be a serious misconduct in terms of the certified standing orders 29(5) which reads as "Fighting, riotous, disorderly and indecent behaviour."

3. The concerned workman was called upon to explain as to why the disciplinary action should not be taken against him and he was suspended with effect from 28-2-86. The concerned workman submitted his explanation (Ext. M-3) which was found not satisfactory and simultaneously here was an order for domestic enquiry, Shri R. N. Singh, Personnel Officer, South Jharia Colliery was appointed as Enquiry Officer (M-4). The Enquiry Officer submitted his report (Ext. M-7) which was considered and the concerned workman was dismissed on 12-7-86 (Ext. M-9).

4. The workmen and the management have both filed their W. S. The concerned workman denied each and every allegation levelled against him in the chargesheet and he further stated that he had gone to the doctor of the Post Bhuggatdih Colliery dispensary and also narrated the serious condition of his mother. He also stated that his father was not present at the house and in his absence he had to rush to the hospital for treatment of his mother. As stated by the workman he tried to impress upon the doctor that his mother was not in a position to be carried to the hospital even by Ambulance and therefore requested him to go to the residence but the doctor point blank refused. Ultimately he had to remove his mother to a nursing home at Jharia. He has denied all other allegations like hurling abuses and catching of the collar of the shirt.

5. The management has also filed W.S. reiterating every allegation as alleged in the chargesheet. It was stated that the concerned workman abused the doctor in filthy language and also held out threats to assault him. Lastly it was submitted that the action of the management in dismissing the concerned workman from his service was legal bona-fide and justified and it was urged that an Award be passed

accordingly holding that the concerned workman was not entitled to any relief.

6. The learned counsel for the workman conceded that the domestic enquiry was fair and proper and accordingly the learned counsel of both the sides have been heard on merit. How in the circumstances, we have to see whether here was evidence before the Enquiry Officer to hold the concerned workman guilty of misconduct.

7. At the first instance a legal aspect of the matter was canvassed by the learned counsel for the workman. It was stated that the occurrence took place within the jurisdiction of East Bhuggatdih colliery whereas the concerned workman is an employee of Ena Colliery. It was urged that these are two different collieries and the Agent of Ena Colliery had no jurisdiction to dismiss a workman. It was contended that the management cannot be the custodian of the morals of its employees and any act committed beyond the premises of the establishment or vicinity thereof cannot be treated as subversive of disciplinary. However, the learned counsel for the management submitted that there may be several collieries within one and the same area. It was urged that the terms of reference speaks in very many words that the management of Ena Colliery is under Area No. VIII Kustore of M/s. B.C.C.L. MW-1 in his opening line of cross-examination stated that Bhuggatdih Colliery is under Area No. VIII. It is not that the incident took place with different persons in different areas. Since the Area was one and the same it was within the competence of Ena colliery to take action against the concerned workman. At this stage I may further add that in industrial affairs relationship between the employer and the workmen is the matter of paramount importance. Only the smooth relationship will allow smooth working of any industry. In this case the act done by the concerned workman was not solely confined to the private life. He himself misbehaved rather exhibited an act of gross indiscipline with the doctor of Bhuggatdih Colliery when the doctor was on duty. The incident has got direct link with the general relationship of employer and employee. In such a situation the act committed even outside the establishment or vicinity thereof will amount to an act subversive of discipline. In such view of the matter I am constrained to hold that Ena Colliery had every jurisdiction to issue chargesheet and proceed against the concerned workman.

8. During the course of argument the learned counsel for the workman also wanted to bring on the record a photo copy of the judgement of the Criminal Court just to show that the concerned workman was found not guilty in the criminal trial and he was acquitted. Definitely the document was not placed before the Enquiry Officer in the domestic enquiry. It was contended on behalf of the management that the Tribunal cannot permit fresh evidence to be adduced on merit of the case when the domestic enquiry has been held to be fair and proper. Reliance was also placed upon a judgement of the Hon'ble High Court of Patna reported in 1978 LIC at page 494 M/s. Rohtas Industries Ltd. versus Their workmen. In the aforesaid case the Court held that by the introduction of Section 11A the Industrial Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether said evidence establishes the misconduct alleged against an employee. The Tribunal, therefore has the power to examine the evidence led in the domestic enquiry and came to a different conclusion but the materials on which it can do so will be confined to the evidence led in the domestic enquiry as is clear from the proviso of the Section 11A. The Hon'ble Court further held that the Tribunal is not permitted to take any fresh evidence in reaching such a conclusion.

9. The learned counsel for the management further relied upon one unreported decision of the Hon'ble Patna High Court. Ranchi Bench in Civil Writ Jurisdiction case 1961 of 1981. His lordship has been pleased to hold that it is open to an Industrial Tribunal to consider the evidence pro-

duced before the Enquiry Officer and to re-appraise the same. It is also open to the Industrial Tribunal to disagree with the finding recorded by the Enquiry Officer and to record his own finding on the basis of the materials already placed before the Enquiry Officer. His Lordship specifically observed that it cannot permit fresh evidence to be adduced or to be taken into account on merit of the case. Certainly such evidence is permissible while considering the question of victimisation or unfair labour practice.

10. In view of these authorities it is crystal clear that no fresh evidence can be accepted at this stage and the merit of the case has to be decided only on the basis of the evidence adduced before the Enquiry Officer. In view of the facts stated above now let us examine the case with reference to the materials on record.

11. The doctor while reporting the matter to the Agent, Una Colliery reproduced the abusive language used against him by the concerned workman. But the charges levelled against the concerned workman do not speak in so many words. It simply stated that the concerned workman all of a sudden reacted, abused him and assaulted him by matching collar of Dr Ojha's shirt and tried to hit him with lathi. In this way the chargesheet does not state the abuse as stated by the doctor in his evidence. In this connection I may refer to Ext. M-3 which is the reply submitted by the concerned workman to the chargesheet issued against him. In the reply the concerned workman stated that if his mother died who will take the responsibility of her death to which the doctor was alleged to have replied that he was not going to take any responsibility. The concerned workman stated that the said remark provoked him to raise his voice but he never abused nor he was on the point to assault the doctor as alleged in the chargesheet. However, he admitted that he had simply raised his voice and stated that the doctor will have to take the responsibility. It may be mentioned here that according to own admission the concerned workman had raised his voice but he did not state this thing in his W.S. The matter came up for consideration whether the doctor was obliged to attend the mother of the concerned workman at his residence. MW-1 stated that in case of emergency in colliery the doctor appears at the spot if he is on duty. But the witness again stated that he could not say if in case of emergency at the residence of any employee or a workman, the doctor has to attend at the residence. In this connection I may also refer to the statement of the concerned workman recorded during the course of enquiry. His statement was recorded and he was cross-examined by the management's representative. I find that the enquiry officer at page 37 of the Enquiry Proceeding has reproduced the relevant provision regarding attendance and treatment of a patient at the residence. Chapter 3 of the Medical Attendance Rules states that in exceptional cases when the removal of the patient to the hospital/dispensary is considered dangerous to the life of the patient, the authorised medical attendant may at his discretion attend to the patient at his residence.

12. This shows that the doctor was not precluded from attending any patient at his residence but that was definitely not very compulsory. It was for the doctor to exercise his discretion. According to workmen his mother was suffering from heart trouble but the doctor was not aware or nothing had been shown to the doctor that his mother was a heart patient and so naturally it was within the discretion of the doctor whether to attend the patient or not at his residence.

13. First of all I may refer to the evidence of the doctor who stated each and every allegations including the filthy abuses hurled by the concerned workman upon him. He stated that the concerned workman caught hold of the collar of his shirt and he also picked up the name plate from the table and wanted to assault him but he was intervened by the clerks. The doctor stated that the workman concerned snatched the lathi from the chaprasi and tried to assault him (doctor). Again the clerk intervened and the workman was pushed out of the chamber. MW-2 Shri Govind Prasad was one of the clerk of the dispensary. He heard hulla and was called by Rajaram Jaiswara. He went to the chamber of the doctor and found hot exchange of words going on between the doctor and the concerned workman. He saw the concerned workman who caught hold of the doctor by his collar. He also stated that the concerned workman wanted to assault the doctor with lathi but he intervened and pushed him out of the room.

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14. MW-3 Shri Kanti Dubey is also a clerk of the dispensary. He saw the concerned workman who caught the doctor by the collar of his shirt. He did not see any other part of the occurrence. In this way we find that these two clerks stated that the concerned workman had caught the doctor by his collar. Even the concerned workman admitted vide Ext. M-3 that he had raised his voice. I think raising of voice should be read and understood in its wider connotation. Definitely the concerned workman was very much agitated and he wanted to take the doctor to his residence. The concerned workman stated that he was very much provoked and he had simply raised his voice. But in my opinion raising of voice will definitely be followed by some effect. On the basis of this analogy also which seems but natural, the concerned workman must have taken further steps. Although there was allegation that he snatched lathi from the chaprasi and re-entered the chamber and wanted to cause physical injury. He also had picked up the name plate of the doctor but I find that these facts are not happily corroborated from the evidence of other witnesses. I have also looked to the evidence of Rajaram Jaiswara witness No. 4. He stated very specifically that the concerned workman had snatched away lathi from him but he had not entered the room with the lathi for the second time. From the evidence of this witness it appears that there was hot exchange of words between the concerned workman and the doctor and sensing something wrong he went to call the clerks of the dispensary. Since the chaprasi was outside the room he might not have seen every bit of the occurrence which happened inside the chamber.

15. From the facts noted and the discussion made above it is established that the concerned workman had caught the doctor by the collar of his shirt just to cause physical injury on his person. It is not necessary that assaults should also be caused physically but even show of force will arrest ingredients of assault. In the present case catching the collar of the shirt will sufficiently amount to show of force and it will embarrass the definition of assault.

16. After having considered this aspect of the matter I am to hold that the concerned workman was guilty of the misconduct and as such I concur with the findings recorded by the Enquiry Officer during the domestic enquiry.

17. The learned counsel for the workman has urged that even if it be held that the concerned workman was guilty of misconduct, still the penalty imposed was excessive and quite disproportionate to the alleged misconduct. From the evidence available on the record it appears that the concerned workman was very much swayed by emotion and feeling when the doctor refused to go his residence to see his ailing mother. In the given situation I do not think that a very harsh punishment like dismissal from service of concerned workman was warranted in this case. In the result, the punishment of dismissal is reduced to reinstatement without any back wages. However, the concerned workman will get continuity of service. The management is directed to reinstate the concerned workman in his original job with continuity of service within one month from the date of publication of the Award.

An award is passed accordingly.

B. RAM, Presiding Officer

[No. 1-20012/15-87-D.III(A) (IR(CJ))]

का.प्र. 2904-—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14)

की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सैमर्स जी.सी.जी.एल. की कनकनी कोलियरी के प्रबन्धक से संबद्ध नियोजकों और उनके कर्म-कारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1) धनबाद के पंचाट की प्रकाशित कमी है, जो केन्द्रीय सरकार को 29-10-91 को प्राप्त हुआ था।

S.O. 2904—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kankanee Colliery of M/s. B.C.C.L. and their workmen which was received by the Central Government on the 29-10-91.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL,
TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of
the Industrial Disputes Act, 1947.

Reference No. 127 of 1989

PARTIES :

Employers in relation to the management of Kankanee
Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen

PRESENT :

Shri S. K. Mitra,
Presiding Officer

APPEARANCES :

For the Employers.—Shri B. Joshi, Advocate.

For the Workmen.—Shri B. K. Ghosh, Member, Execu-
tive Committee, Janta Mazdoor Sangh.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 10th October, 1991

AWARD

By Order No. L-20012/140/88-I. R. (Coal-1), dated, the
5th October, 1989, the Central Government in the Ministry
of Labour, has, in exercise of the powers conferred by
clause (d) of sub-section (1) and sub-section (2-A) of section
10 of the Industrial Disputes Act, 1947, referred the follow-
ing dispute for adjudication to this Tribunal :—

"Whether the action of the management of Kankanee
Colliery of M/s. Bharat Coking Coal Ltd. in dis-
missing from service to Shri Shankar Nahak, Miner/
Loader (I.D. Card No. 35793(M.L.) w.e.f: 14-1-88
is justified? If not, to what relief the concerned
workman entitled.

2. The case of the management of Kankanee Colliery of
M/s. B.C.C. Ltd., as disclosed in the written statement-cum-
rejoinder, details apart, is as follows :

One workman named Shankar Nahak son of late Juddhisthir
Nahak of village Sunathor, P. O. Sunathor, P. S. Purusottam-
pur, Dist. Ganjam (Orissa) was working as miner/loader at
Kankanee Colliery from 1970. He contracted leprosy in
1976 and left the colliery for his treatment at his village
home where he died on 6-2-83. The concerned workman,
namely, Bancha Nahak hails from the same village of
Shankar Nahak and surreptitiously entered into the service
of Shankar Nahak with the connivance of the dealing staff
during the period of sickness of late Shankar Nahak. When
the wife of late Shankar Nahak demanded for her em-
ployment as dependent of late Shankar Nahak, the case of
impersonation was detected and disciplinary action initiated.
Chargesheet dated 23-8-86 was issued to the concerned
workman. He submitted his reply to the chargesheet deny-
ing the allegation levelled against him. Shri D. N. Jha
Dy. Personnel Manager, was appointed Enquiry Officer by
letter dated 25-6-86 of the Superintendent of the colliery
who is Agent under the Mines Act, 1952, Shri A. K.
Shukla, Colliery Manager, 1st Class, was appointed present-
ing officer. Departmental enquiry was held in presence of
the concerned workman and in conformance to the principles
of natural justice. The concerned workman did not raise
any objection against the procedure of enquiry or the En-
quiry Officer. The Enquiry Officer found the concerned
workman guilty of the charge levelled against him upon
the materials on record. The competent authority consid-
ered the enquiry proceedings, enquiry report and other re-
levant papers and approved of the dismissal of the concerned
workman from service. Accordingly, he was dismissed from
service by letter dated 14-1-1988 with immediate effect.

3. The case of the concerned workman, as appearing
from the written statement submitted on his behalf by the
sponsoring union, Janta Mazdoor Sangh, is that Shankar
Nahak, miner/loader, a permanent workman of Kankanee
colliery of M/s. B.C.C. Ltd. was chargesheeted by the
management on the alleged ground of impersonation by
chargesheet dated 28-3-86. The workman submitted his
reply to the chargesheet. The management decided to hold
domestic enquiry and as per finding of the Enquiry Officer,
the concerned workman was dismissed from service with
effect from 14-1-88. The case of the workman was that
he was employed in Kankanee colliery in 1970 and
his name appeared at serial No. 1074 in Form 'B' Register
which bears his L.T.I. as well. The Identity Card bearing
No. 35793/M. L. was issued to him as early as 1972-75
which bears his photograph. The Identity Card Register
bearing his photograph was prepared simultaneously with
the Identity Card. All the pay sheets of Kankanee colliery
also bear his L.T.I. In the circumstances, the charge of
misconduct against him on account of impersonation is
baseless and false and he has been a victim of ill-will malice
and grudge against him. The order of termination of service
by dismissal is not supported by any valid or reliable
evidence. There is no valid evidence on record to show
that any person having the name of Shankar Nahak had
ever worked at Kankanee colliery and on this ground alone
the order of dismissal of the concerned workman from ser-
vice is liable to be set aside. In the circumstances, the
union has proved that the order of dismissal passed by the
management be set aside and the concerned workman be
reinstated in service with full back wages from 28-3-86.

4. In reply to the written statement of the sponsoring
union the management has stated that the concerned work-
man is named Bancha Nahak and he impersonated Shankar
Nahak after 1976. His L.T.I. could not be found in old
Form 'B' Register. The management has further stated that
there were number of cases of removing photos from
Identity Card and Identity Card Register and replacing the
same with photographs of impersonators with connivance
with dealing staff who happened to be leaders of various
unions. The concerned workman put his L.T.I. on the pay-
sheet between 1976 to 1987 during the period of his work.

5. In rejoinder to the written statement of the manage-
ment the union has totally denied the allegations of im-
personation against the concerned workman.

6. At the instance of the management the propriety and
fairness of domestic enquiry was considered as preliminary
issue. The management laid in evidence entire domestic
enquiry proceeding including report which have been mark-
ed Exts. M-1 to M-5. The Enquiry Officer was not examin-
ed by the management.

Shri B. K. Ghosh, authorised representative of the spon-
soring union, accepted the fairness and propriety of the
domestic enquiry. This being the position, it was held that
the domestic enquiry was held fairly and properly.

7. According to the case of the management one work-
man by the name of Shankar Nahak son of late Juddhisthir
Nahak of village Sunathor, P. O. Sunathor, P. S. Purusottam-
pur, Dist. Ganjam (Orissa) was working as miner/loader at
Kankanee Colliery from 1970 and that he contracted leprosy
in 1976, left for his village home and died on 6-2-83. Form
'B' Register produced in domestic enquiry and marked exhibit
describes the particulars of Shankar Nahak at serial No.
1070 as follows :—

Shankar Nahak,
son of late Juddhisthir Nahak,
Village-Sunathor,
P. O. Bhatkuma,
P. S. Barhanour
Dist. Ganjam (Orissa).

No photograph of this Shankar Nahak was produced in
domestic enquiry by the management. In order to sustain
the charge of impersonation against the concerned work-
man, the management must perforce prove that one work-
man by name of Shankar Nahak was working in Kankanee
colliery in 1970. The fact revealed in the Form 'B' Register

does not lead to the establishment of identity of this Shankar Nahak.

8. Anyway, it appears that one Jambhu Nahak disclosing herself to be the wife of late Shankar Nahak, Ex-Miner/Loader of Kankanee Colliery, represented to the management by a letter dated 22-3-1986 that her late husband employed in Kankanee Colliery as miner/loader from October, 1970 and that his name appears in Form 'B' Register at serial no. 1070. Jambhu Nahak has further disclosed in her letter that her husband was under the treatment of Sub-Divisional Medical Officer, Chattrapur from 1976 onwards and he expired on 6-2-83 and when she came to the Colliery to get benefits under the N.C.W.As, she learnt on enquiry that one Bancha Nahak was working in the name of her late husband. She alleged that Bancha Nahak induced himself into the service of the colliery by impersonating her ailing husband. She enclosed the death certificate of her husband and certificates from the Sarpanch Sunathor Gram Panchayat and B.D.O., Purushottampur. She prayed that imposter be removed from service and she was widow of Shankar Nahak be employed under the provisions of N.C.W.A. The management, upon receipt of this letter, leapt into action and without making any preliminary enquiry issued the following chargesheet against the concerned workman and stopped him from duty.

"Ref. No. KN/PS/CS-16/86.

Dt. 28-3-86

To,
Sri Shankar Nahak,
Miner/Loader,
Kankanee Colliery.

CHARGE SHEET

It has been reported to the undersigned that, you being Bancha Nahak allegedly impersonating to Sri Shankar Nahak S/o late Judhisthir Nahak, Vill-Sunathor, P.O.-Sunathora, Purusettampur, Dist. Ganjam (Orissa) and fraudulently working in the name of Shankar Nahak.

Your above action amounts to misconducts punishable under the Clause of the Certified Standing Order of the Colliery as given below :-

27(2)---"Theft, fraud or dishonesty in connection with the Company' business or property".

27(17)---"Giving of false information regarding his name, age, father's name, qualification or previous service at the time of employment."

You are hereby asked to show cause within 48 hours of the receipt of this charge sheet as to why disciplinary action should not be taken against you failing which it will be presumed that you have nothing to defend on your part and disciplinary action will be proceeded exparte.

Pending enquiry and decision you shall remain suspended.

Sd/- Superintendent."

8. The chargesheet firmly discloses that the concerned workman was impersonating Shankar Nahak son of late Judhisthir Nahak of village Sunathor, P. O. Sunathor, P. S. Purusottampur, Dist. Ganjam (Orissa) and that his real name is Bancha Nahak. I have already pointed out the particulars of Shankar Nahak as disclosed in the Form 'B' Register. The particulars of Shankar Nahak as disclosed in Form 'B' Register do not agree with those as disclosed in the chargesheet because according to Form 'B' Register the father of Shankar Nahak was alive and the names of the Post Office and P. S. also differ. I have already pointed out that entries made in the Form 'B' Register do not automatically establish the identity of Shankar Nahak whom the management considered as the real Shankar Nahak. I have also pointed out that no photograph of this Shankar Nahak has been produced. Anyway, the concerned workman gave reply to the chargesheet denying the charge. His reply to the chargesheet is not available in file relating to the domestic enquiry. But there is no dispute about the fact that the concerned workman denied the charges levelled against him. The Enquiry Officer has not spelt out in his report the defence of the concerned workman as disclosed

in his reply. However, the concerned workman has made statement in the domestic enquiry in support of his defence disclosing that he is Shankar Nahak but his called name is Bancha Nahak and he has been working in Kankanee Colliery since 1969 before nationalisation. He further disclosed that he had got photograph and he put his signature L.T.C. on the papers and underwent training twice and his photograph appears on the certificate of Vocational Training Certificate. He also disclosed that his father's name is Mohan Nahak, but his called name is Judhisthir Nahak. He admitted to have known the complainant and claimant Raghu Nahak who deposed for the management as his co-villager. He has also admitted that he was undergoing trial in Criminal Court on the charge of fraud. Incidentally it may be mentioned that the management submitted an F.R.K. against the concerned workman who was arrested by the police but released on bail by the Patna High Court. Thus, the defence of the concerned workman against the charge of impersonation is that he was working in Kankanee Colliery since 1969 before nationalisation and that Bancha Nahak was his called name and Judhisthir Nahak is the called name of his father.

9. It is the firm case of the management that the concerned workman sneaked into employment of the colliery during the illness of Shankar Nahak in 1976. This allegation could have been proved easily by the management by producing the photograph of the person whom the management considered as real Shankar Nahak. This has not been done. Then again, the management could have proved identity of Shankar Nahak who was employed in the colliery before his illness by producing his thumb impression and the thumb impression of the concerned workman as available in the chargesheet and by making comparison of these two sets of thumb impressions by expert. This has also not been done. Form 'B' Register bears the thumb impression of a workman named Shankar Nahak. Had this thumb impression been the thumb impression of the person whom the management considers as real Shankar Nahak then this thumb impression could have been examined by expert with the thumb impression of the concerned workman. This has not been done as well.

10. At the time of domestic enquiry Jambhu Nahak, the complainant and claimant for employment and Raghu Nahak, her co-villager have stated that the name of the concerned workman Nahak Bancha Nahak son of Mohan Nahak and that Bancha Nahak has been working in the Colliery by impersonating Shankar Nahak who went to his native home in Orissa due to illness of leprosy in the year 1976. But there is no vestige of documentary evidence on record that the concerned workman started working in the colliery during the absence of Shankar Nahak in 1976. The other witnesses for the management have stated that the name of the concerned workman is Bancha Nahak and that Shankar Nahak and Bancha Nahak hail from the same village. Another witness for the management is Rameshrya Singh, Mukhya of Kankanee Gram Panchayat. His evidence discloses that immediately upon receipt of a written complaint from Jambhu Nahak he accosted the concerned workman and thereafter seized his identity card as if he was the guardian of law and order. Anyway, according to him he found that the name of father of the concerned workman was over-written in the Identity Card and his photograph was pasted over the Identity Card. Indeed, there is some over-writing in the Identity Card but there is no evidence that it was done by the concerned workman. Photograph is required to be pasted, but the question is whether it was pasted over a photograph or over a blank space. Identity Card Register bears the photograph of the concerned workman and that completely agrees with the photograph of the concerned workman as appearing in the Identity Card and the photograph on the certificate issued by the Mines Vocational Training Centre. It is the firm case of the union that the Identity Card Register and the Identity Card were prepared simultaneously. This fact has not been disputed by the management. The photograph of the concerned workman as appearing in the Identity Card Register completely agrees with his photograph as appearing in the Identity Card. The management has taken the plea that this was done by manipulation by the staff. But this plea has not been proved at all by any evidence. The certificate

issued by Sarpanch, Sunathor Gram Panchayat relating to the employment of Shankar Nahak son of Judhishthir Nahak and the concerned workman impersonating him are pieces of hearsay evidence which has got no evidentiary value at all. The Enquiry Officer seems to have leaned heavily on this certificate and other documents, but they have got no intrinsic evidentiary value at all. It appears that the wife of the concerned workman had purchased some property disclosing the name of her husband as Bancha Nahak. But this does not militate against the concerned workman at all. The concerned workman is not the author of this deed. Besides, he has not denied that he is known by Bancha Nahak as well. What he has stated is that his called name is Bancha Nahak and he is known as Shankar Nahak as well. It may be that his villagers who have deposed in the domestic enquiry know him by his called name and they do not know his real name.

11. Upon consideration of evidence on its entirety I come to the firm conclusion that the management has failed to prove that one workman by the name of Shankar Nahak other than the concerned workman was employed in the colliery and that the concerned workman impersonated this person and sneaked into the service of the colliery during illness of the former in 1976. This being so, the charge of impersonation against the concerned workman must founder on the ground. It follows, therefore, that the action of the management in dismissing the concerned workman from service with effect from 14-1-88 is not justified.

12. Accordingly, the following award is rendered—the action of the management of Kankane Colliery of M/s. B.C.C. Ltd. in dismissing Shri Shankar Nahak, Miner/Loader from service with effect from 14-1-88 is not justified. The order of dismissal passed by the management against the concerned workman is hereby set aside. The management is directed to reinstate him in service with effect from 14-1-88 and pay him full back wages from that date till he resumes his duty with continuity of service within one month from the date of publication of the award. The period of his absence from 28-3-86 till the date of his dismissal shall be treated as leave without pay. The concerned workman is directed to report for duty within one month from the date of publication of the award.

In the circumstances of the case, I award no cost.

Sd/-

S. K. MITRA Presiding Officer.

[No. I-20012 140/88-IR (C-1)]

का. प्र. 2905.—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैक्स बी.सी.सी.एल. का मोहुदा एरिया के प्रबन्धनत्व से संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित प्रौद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक (स. 2), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार 29-10-1991 को प्राप्त हुआ था।

S.O. 2905.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Mohuda Area of BCCL and their workmen, which was received by the Central Government on 29-10-1991.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

In the matter of a reference under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 322 of 1986

PARTIES :

Employers in relation to the management of Mohuda Area of Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen—Shri D. Mukherjee, Advocate

On behalf of the employers—Shri R. S. Murthy, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dhanab, the 21st October, 1991

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. I-20012 (159)/86-D.III (A), dated, the 3rd September, 1986.

SCHEDULE

“Whether the action of the management of Mohuda Area of Bharat Coking Coal Limited in dismissing from service their workman Shri Kirti Bas Singh, Amin from 18-1-1985 was justified? If not, to what relief is the said workman entitled?”

2. The occurrence took place on 12-2-83 when the concerned workman and other co-worker namely Shri Kartik Singh committed act of misconduct giving rise to the submission of chargesheet against both of them. It may be mentioned at the very outset that Shri Kartik Singh had a separate Reference viz. Ref. No. 47-86 and the necessary award in that reference had already been passed. The present reference is simply confined to the concerned workman Shri Kirti Bas Singh.

3. One Shri S. K. Sahney acting as Accounts Clerk in Accounts department Mohuda area office had committed fraud and was chargesheeted. This was published in the paper “Awaz” and consequent upon this concerned workman along with Shri Kartik Singh had created commotion, held out threats using derogatory and unparliamentary words against the General Manager and other officers including Personnel Manager of the Area and as a result whereof the necessary chargesheet was issued vide Ext. M-5.

4. In the chargesheet there were as many as 6 charges against the concerned workman. Briefly stated it was alleged that he abused and threatened the G.M. and shouted that the chargesheet issued against Shri S. K. Sahney, piece rated worker (Acting as Clerk in Accounts Section) must be withdrawn immediately. It was alleged that he also shouted that he would create problem in Mohuda area and would not allow the G.M. to stay and allow him to function. He was charged that he entered the chamber of the Personnel Manager and demanded shouting at the top of his voice as to why the chargesheet issued to Shri S. K. Sahney was published in the newspaper on 12-2-83. He also shouted and called the Personnel Manager as a thief. It was also stated that he assembled in the corridor in front of the G.M.'s chamber and shouted derogatory slogan namely D. C. Aggarwal Murdabad D. C. Aggarwal Wapas Jao Mr. Dig Chor Hai and Mr. Kumar Chor Hai.

5. The concerned workman was called upon to explain as to why the disciplinary action should not be taken against him and he was also placed under suspension immediately.

6. The concerned workman submitted his reply (Ext. M-7) and stated that the chargesheet issued against him was false and baseless and the same has been issued against him with a view to curb his union activities.

7. The reply submitted by the concerned workman was considered which were found quite unsatisfactory and ultimately he was dismissed with effect from 18-1-85 vide Ext. M-12 after domestic enquiry.

8. The concerned workman filed W.S. denying all the charges to be baseless and he asserted that he had never abused the G.M. nor he instigated any member of the staff to stop the work. The action of the management in dismissing the concerned workman was vindictive in nature and it was abuse of the power and the concerned workman has been

victimised for his union activities. Accordingly it was prayed that an Award be passed in favour of the concerned workman and he be reinstated in service with full back wages.

9. The management also filed W.S. stating all allegation to be correct. The management submitted that all the allegations levelled against the concerned workman as detailed in the chargesheet were correct. It has been denied that the management was biased or prejudiced against the concerned workman on account of his so called active association with other workman or for his union activities. It was also submitted that there was no legal bar to an officer who was abused and threatened in issuing chargesheet against the concerned workman. Lastly it was submitted through the W.S. that the G.M. being the Senior officials of the management had taken notice of the certain acts of the misconduct on the part of the concerned workman and chargesheet was issued against him. It was the duty of the G.M. to enforce discipline and if such gross indiscipline is not taken notice of it will be impossible to maintain discipline in the organisation and it will lead to disastrous consequence. It was contended that the concerned workman was dismissed by the successor of D. C. Aggarwal the then G.M. and the said dismissal order was issued with the approval of the Director of Personnel. In this way it has been urged that the prayer of the concerned workman be rejected and the reference be answered in favour of the management.

10. The propriety and fairness of the domestic enquiry was heard as a preliminary issue and it was held that it was fair, proper and in accordance with the principles of natural justice. Now in the circumstances of the case this Tribunal has to see as to whether the finding recorded by the Enquiry Officer was in consonance with the materials available on the record.

11. Out of the two concerned workman Shri Kirti Bas Singh simply had attended the domestic enquiry and he had also examined some of the witnesses. I find that 4 to 5 witnesses were also examined on behalf of the management. MW-1 is Shri D. C. Aggarwal, the G.M. Mohuda Area and he has given a complete account of the occurrence. He stated that he was in his office in Mohuda area when he saw Kartik Singh crying in the corridor and holding out threats to him. In the meantime the concerned workman also reached there and joined his hands with Kartik Singh and shouted that chargesheet against Shri Sahney had to be withdrawn immediately. The witness further stated that the concerned workman also threatened that he will not allow the area to be run by the Manager and he will have to go back. The concerned workman also instigated the staff to stop the work and to gherao the Personnel Manager. Shri Aggarwal in his continued statement stated that the concerned workman for the second time shouted derogatory slogan like D. C. Aggarwal Murdabad D. C. Aggarwal go back. Mr. Dig and K. Kumar are thieves. The witness further explained that filthy language used by the concerned workman in his slogan was that the sticks will be inserted inside the officers. Lastly Shri Aggarwal stated that on account of such unsightly behaviour and instigation about 40 workers had to stop their work. I find that Shri Aggarwal had been thoroughly cross-examined by the concerned workman but nothing has been shown to disbelieve his credence.

12. Shri Aggarwal stated that Shri K. Kumar P.M. had come to his chamber and apprised him of what happened with him (K. Kumar). Shri Kumar has stated in his evidence that the concerned workman called him thief. The witness had reached the scene of occurrence and he had heard the concerned workman shouting that the chargesheet against Shri Sahney had to be withdrawn. He also heard and saw the concerned workman shouting that he will not allow the area to run and D. C. Aggarwal go back.

13. I find that there are some other officers also who have stated the manner of occurrence. Shri P. K. Roy, Dy. C.M.E. and Shri Sudhakar Pandey, Projected Officer have stated first part of the allegation against the concerned workman. They have stated that the concerned workman was shouting that the chargesheet against Shri Sahney should be withdrawn and D. C. Aggarwal go back. So far other part of

the allegations namely shouting derogatory slogan and hurling abuses against the G.M. and other officers have not been supported by these witnesses.

14. Shri K. Kumar, Personnel Manager has also supported this part of the occurrence and he further stated that he was called thief by the concerned workman. One S. C. Sinha Sr. A.O. has also been examined on behalf of the management and he also stated about the occurrence concerning withdrawal of chargesheet against Shri Sahney. He also heard calling Personnel Manager as thief. Through the cross-examination of these witnesses the concerned workman has tried to derive at that he was actually trying to pacify and reason with Shri Kartik Singh who was very much agitated. In this way he has himself admitted his presence at the place of occurrence. Some other clerks namely Shri M. R. Ansari, Shri Ladan Dubey and Shri S. N. Singh have been examined on behalf of the concerned workman and they denied about the charges. According to them nothing happened in front of the office of the G.M. According to them the concerned workman had gone to the office of the Personnel Manager and had simply requested him that two persons are involved in a case while the departmental proceeding was started against one man namely Shri S. K. Sahney. They have denied about other parts of the occurrence namely holding out threats and hurling of filthy abuses against the G.M. and other officers. The statement of Shri Kirti Bas Singh was also recorded and he denied to have participated in the occurrence and committed any act of misconduct as alleged in the chargesheet. I have examined the evidence adduced on behalf of both the parties. I have also gone through evidence of the witness examined on behalf of the management very minutely and I find that nothing was elucidated from their evidence to disbelieve their credence. From their evidence atleast one aspect of the charge that the concerned workman had shouted that the chargesheet against Shri S. K. Sahney must be withdrawn immediately otherwise he would create problem in the Mohuda Area and would not allow the G.M. to stay and function, has come out. In this way I find that this part of the allegation has been supported by the witness examined on behalf of the management with least contradiction and I find that there is no reason to disbelieve their testimony. At this stage it was contended by the learned counsel for the concerned workman that all the witnesses examined in this case are highly interested persons. In this connection I would like to mention that the occurrence took place in the office area and during the working hour. At that place no other outsider is expected specially during the office hour. In the circumstances it was rightly pointed and canvassed by the learned counsel for the management that independent witness cannot be manufactured.

15. I have considered the entire evidence available during the course of domestic enquiry. I have also gone through the enquiry report submitted by the Enquiry Officer (Ext. M-2) I am of the view that the finding recorded by the Enquiry Officer is quite in consequence with the materials on record and I also hold the view that the concerned workman as guilty of disorderly behaviour, wilful insubordination, threatening and preaching of violence.

16. Lastly the learned counsel for the workman submitted that shouting slogan should not be taken very hard and the concerned workman deserve lenient view of the matter. I have taken into consideration the submission so made and in my view also the punishment of dismissal appears to be quite harsh and disproportionate to the charges levelled against the concerned workman.

17. In the result regard being had to the charge proved against the concerned workman and also keeping in view of the fact that there was no previous history of any bad conduct, I think the stoppage of one increment permanently and payment of only half back wages from the date of dismissal to the date of reinstatement of the concerned workman will meet the ends of justice.

18. The concerned workman is entitled to be reinstated in his original job with payment of half back wages from the date of dismissal with permanent stoppage of one future increment. The management is therefore, directed to reinstate the concerned workman with payment of half back wages from the date of dismissal to the date of reinstatement.

ment within one month from the date of publication of the Award with stoppage of one permanent increment.

This is my Award.

B. RAM, Presiding Officer

[No. L-20012/159,86-D.III (A)/IR (C. I)]

K. J. DYVA PRASAD, Desk Officer

नई दिल्ली, 25 अक्टूबर, 1991

को.आ. 2906—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सेंट्रल वेयर हाउसिंग कार्पोरेशन, बम्बई के प्रबन्धन के संबंध में निदेशों और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-10-91 को प्राप्त हुआ था।

New Delhi, the 25th October, 1991

S.O. 2906.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Warehousing Corporation, Bombay and their workmen, which was received by the Central Government on 23/10/1991.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer.

Reference No. CGIT-2/8 of 1990

PARTIES :

Employers in relation to the Management of Central Warehousing Corporation, Bombay

AND

Their Workmen.

APPEARANCES :

For the Employer—Shri S. Ramdas Representative.

For the Workmen—Shri Digambar Singh Workman in person.

INDUSTRY : Warehousing STATE : Maharashtra
Bombay, the 10th October, 1991

AWARD

The Central Government by their order No. L-42011/1/90-IR (Misc.) dated 7-6-1990 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947.

“Whether the action of the management of C.W.C. Bombay, in transferring Shri Digambar Singh, Tech. Assistant from Bombay to Mour Mandi with effect from 3-8-1989 and also withholding his salary for August 1989, and bonus for the year 1988-89, is justified? If not, what relief the concerned workman is entitled to?”

2. The case of the workman Shri Digambar Singh, as disclosed from the statement of claim (Ex. 2-A) filed by him in his individual capacity, as well as the General Secretary of the C.W.C. Technical Staff Welfare Association, Bombay, in short, is thus :—

The abovesaid Union is a registered union under the Trade Unions Act, and that union was formed in

January 1987 to organise the Technical workmen of the Central Warehousing Corporation, and to take up their grievances to the management. The said union was registered in February 1989. The registration of the Union of the Technical Workmen was never liked by the management since beginning, and they started showing their displeasure towards that union. After the registration of that union, the management encouraged the members of the rival Union at Cotton Green to commit illegal acts against the workmen and the office bearers of the Union in question. The management started committing the unfair labour practices. The management by adopting the unfair labour practice transferred Shri Mukesh Yadav, the Technical Assistant and the Vice-President of the Union in question, from Bombay to Mour Mandi by their order dated 8-3-1989. That Vice-President was again transferred by their order dated 23-5-1989 to Rampur in U.P., during the pendency of the conciliation proceedings before the Regional Labour Commissioner (Central) New Delhi.

3. The Workman further alleged thus :—

By adopting the same unfair labour practice, the management transferred the workmen, who was the General Secretary of the Union in question, from Cotton Green to Borivali by the order dated 13-7-1989, to stop him to attend to the work of the Union promptly and with a view to break the Union. The industrial dispute was thereafter raised by the Union by the letter dated 15-7-1989 in respect of the transfer order of the workman. While that industrial dispute was pending before the Conciliation Officer, the management by their order dated 3-8-1989 transferred the workman from Bombay to Mour Mandi in Punjab, with a malafide intention and with a view to break the workmen's Union. While many technical assistant senior in service to the workman, were working in Bombay since their appointments in 1976 and 1978, etc., the workman, who was junior to them, came to be transferred. That transfer order dated 3-8-1989 was the 8th transfer of the workman since his appointment in service in November 1978 at Hyderabad. Eventhough the conciliation proceedings were pending before the conciliation officer, in pursuance of the transfer order dated 3-8-1989 the workman was relieved from his duties on 14-8-1989 to join the new place of work. This was also an unfair labour practice on the part of the management. By issuing the relieving order, the management contravened the provisions of sub sections 1 and 3 of Section 33 of the Industrial Disputes Act, 1947, as the service conditions applicable to the workman were changed with effect from 14-8-1989. The transfer order to Mour Mandi was issued by the management because of the trade union activities carried out by the workman. That relieving order dated 14-8-1989 was not accepted by the workman, as it was a malafide one. The management further issued a third transfer order dated 23-9-1989 transferring him to Hissar in Haryana. This transfer order was also issued with a view to victimise the workman because of his trade union activities.

The workman was relieved without providing any substitute in his place at Bombay. There are at present three vacancies of technical workmen at Cotton Green where the workman was working. The workman did not accept the transfer order to Mour Mandi and he continued presenting himself for work at the place in Bombay since 16-8-1989 and onwards. However, no work used to be assigned to him, and he was prevented from doing any work. He was not allowed to sign the attendance register since 16-8-1989 at Bombay. However, the workman is deemed to be even now in continuous service of the management. The management withheld the salary of the workman for the month of August 1989 and the Bonus for the year 1988-89, in contravention of sub-section 2 of Section 33 of the Industrial Disputes Act. This is also an unfair labour practice on the part of the management.

The workman, therefore, lastly prayed that the Tribunal should declare the action of the management in transferring him from Bombay to Mour Mandi as unjust and improper, and should further declare that he is in continuous service of the management, and is entitled to the full back wages from 14-8-1989, and the necessary other reliefs be granted to him.

4. The Regional Manager of the Central Warehousing Corporation, Bombay, by his written statement (Ex. 3) contested the said claim and the prayer of the workman, and in substance contended thus :—

It is true that the Union formed by the workman is a registered trade union. However, it is of recent origin. This Union has been formed by a small number of the employees. There is also one another registered union by name, 'United Central Warehousing Corporation Employees Organisation (Western Zone)' and this Union has been recognised by the management. Most of the employees working in the Bombay Region are the members of the other Union, and it is affiliated to the federation of C.W.C. employees' Unions. The Union in question has no genuine demands at all. There is no question of liking or disliking of any Union on the part of the management. It is not true that the other employee Shri Mukesh Yadav was transferred with the mala fide intention to break the workmen's Union. In fact Shri Yadav was transferred to Rampur on his own request. Shri Yadav never objected to his transfer to Rampur. The workman Shri Digambar Singh was transferred by order dated 17-3-1989 from Cotton Green to Borivali by the Regional Manager as a result of the general shuffle. It is also not true that the said workman was transferred from Bombay to Mour Mandi by the order dated 3-8-1989 with mala fide intention and with a view to break the Union. As he was transferred from Bombay to Mour Mandi by the Head Office of the C.W.C., the local transfer made by the Regional Manager was not implemented and he was relieved from his duties on 14-8-1989 to enable him to proceed to Mour Mandi to join his duties there. As per the Regulation 12 of the Central Warehousing Corporation (Staff) Regulations, 1986, an employee recruited to any post under the C.W.C. shall be liable to serve any where in India or abroad. It is the prerogative of the management to provide substitute in the place of the person transferred, or not. As the said workman was relieved from duties at Cotton Green, Bombay, on 14-8-1989, there was no question of giving him any work thereafter at C.W.C. Cotton Green, Bombay.

5. The management further contended thus :—

The Union of the workman in question has not been recognised by the management, and the workman has not been accorded the status of the 'protected workman'. Normally when an employee is transferred from one region to another region, he is given a Last Pay Certificate, and his subsequent salary and his other dues will have to be claimed from the place where he has been transferred, on the basis of the said Last Pay Certificate. The workman has already been paid the pay for August 1989 of the days he worked in Bombay, and also the bonus for the year 1988-89. It is the prerogative of the management to withdraw a person from one place to another as per the exigencies of the work. The workman had approached the High Court, Bombay, twice by filing a writ petition, and an appeal. But they were rejected on the ground of jurisdiction. The management transferred the workman from Bombay region to Chandigarh region in accordance with the Regulations of 1986 of the C.W.C., and as such, that transfer is justified.

6. The management further contended thus :—

The workman claimed that he is the General Secretary of the Union in question, and its activities spread

throughout the country. If it is so, he can operate his office from any part of the country and there is no condition that he should always remain in a particular region. The workman has been transferred to Mour Mandi, and subsequently to Hissar (instead of at Mour Mandi) in the interests of the C.W.C., and there is no mala fide motive behind it as alleged by the workman. The workman is continuing to stay in Bombay even after he has been relieved of his duties just to create unrest amongst the employees and to spread vicious feelings. The management therefore, lastly contended that their action in question is quite just and proper, and prayed for the rejection of the prayer of the workman.

7. The Issues framed at Ex. 5 are :—

- (1) Whether the employer has indulged in unfair labour practices, as alleged by the workman ?
- (2) Whether the workman has already been paid the wages for August 1989, and the bonus for the year 1988-89 ?
- (3) Whether the action of the management of C.W.C., Bombay in transferring Shri Digambar Singh, Tech. Assistant from Bombay to Mour Mandi with effect from 3-8-1989 and also withholding his salary for August 1989 and bonus for the year 1988-89 is justified ?
- (4) If not what relief the concerned workman is entitled to ?
- (5) What Award ?

8. My findings on the said Issues are :—

- (1) No finding recorded.
- (2) Yes.
- (3) No.
- (4) As per Award below.
- (5) As per Award below.

Reasons

9. The workman Shri Digambar Singh filed his affidavit at Ex. 78, and filed the affidavits of five more workmen in support of his case, and all of them were cross examined on behalf of the management. Shri V. K. Parthasarathy, the Ex-Regional Manager of the C.W.C., Bombay, filed his affidavit (Ex. 80) in support of the case of the management, and he was cross examined by the workman himself. The workman's first witness Shri Dineshkumar Shukla admitted in his cross examination that as per the office memorandum of the management, as employee is liable to be posted on transfer any part of India. He further admitted that an employee is to give an undertaking that in case of his appointment in the C.W.C., he shall be willing to serve in any part of India where he would be posted, and that as per Government Gazette dated 28-2-1986 regarding the C.W.C. and the Staff Regulations No. 12, a person recruited to any post under the Corporation shall be liable to serve any where in India, or abroad. He further admitted that out of the 900 technical employees of the C.W.C. in India, about 220 are the members of the Union in question, and that Union has not been recognised by the management so far. The workman's other witness, Narottam Singh stated in his cross examination that he was also transferred from Reay Road to Cotton Green, Bombay, that he joined at the new place, and that thereafter he started getting his pay from the new office on receiving the Last Pay Certificate from the old office. The workman Digambar Singh admitted in his cross examination that at the time of joining the service with the C.W.C., he had given an undertaking that he would be liable to be transferred anywhere in India. He further admitted in his cross examination that he was paid his wages of 14 days for August 1989, and bonus for the year 1988-89 by the management after the Central Government made the present reference. The workman's witnesses deposed about the transfer of the Vice President of the Union namely Shri Mukesh Yadav from Bombay to Miraj and about the workman's transfer from Bombay to Mour Mandi, and about the alleged partiality and bias of the management towards the Union in question.

10. It is true that under the Regulation 12 of the Central Warehousing Corporation (Staff) Regulations, 1986, a person recruited to any post under the Corporation shall be liable to serve anywhere in India or abroad. As such, he can be transferred at any place in India on administrative grounds. However, such transfer must be a bonafide transfer, and should not be a mala fide transfer. In the case reported in 1966 1 LII Page No. 440 between the Syndicate Bank Ltd., and its workmen, it has been held by the Supreme Court thus :—

“There is no doubt that the Banks are entitled to decide in a consideration of necessities of banking purposes whether the transfer of an employee should be made to a particular place. There is also no doubt that the management is in the best position to judge how to distribute its employees between the different branches. However, if an order of transfer is made mala fide or for some ulterior purposes like punishing an employee for his trade union activities, the Industrial Tribunal should interfere and set aside such an order, because the mala fide exercise of power is not considered as legal exercise of the power.”

In the recent case reported in I.L.C. 1990 Page No. 2020, between R. K. Dubey Petitioner V/s. M.P. State Agro Industries Development Corporation and other Respondents, the High Court of M.P. held thus :—

“In any service when the relationship is that of master and servant, transfer, retirement, promotion etc., are incidents of service. Orders of transfer of a Government Servant like any other administrative or executive orders, are passed invariably for administrative purposes or in public interest. Such orders normally are outside the purview of examination by Courts of law. But an executive decision or action or an administrative decision is liable to be struck down if it is used mala fide or for collateral purpose. Thus, the Court is always reluctant to interfere in the matter of transfer to a public servant, but if it appears that the order of transfer is lacking in bonafide, then for the sake of justice and fair play, the Court can grant the relief.”

11. Section 25 T of the Industrial Disputes Act, 1947, states that no employer or workman or a trade union, whether registered under the Trade Unions Act 1926 or not, shall commit any unfair labour practice. Clause 7 of the 5th Schedule of the Industrial Disputes Act states that, “to transfer a workman maliciously from one place to another place, under the guise of following management policy, is an unfair labour practice.”

12. According to the workman, he was transferred from Cotton Green to Borivali, and then to Mour Mandi in Punjab as he was the General Secretary of the Union in question, and this was an unfair labour practice on the part of the management. According to the management, he was transferred because of the administrative exigencies. However, as the workman has alleged an unfair labour practice on the part of the management, the management should have placed the material on record showing why the services of the workman in question were absolutely essential at the place of transfer i.e. at Borivali or at Mour Mandi in Punjab, or at Hissar in the state of Haryana and why some other person could not be transferred there. No such material has been placed on record on behalf of the management. Further, the workman had raised the industrial dispute regarding his transfer from Cotton Green to Borivali before the Assistant Labour Commissioner, Bombay, and as it was then pending on the date of his transfer from Cotton Green to Borivali and also on the date of the transfer order for his transfer from Bombay to Mour Mandi or Hissar. Even though the Union in question was a minority Union, or formed about two years before the date of transfer of the workman from Cotton Green to Borivali and even though it was not recognised by the management and even though that Union by name C.W.C. Technical Staff Welfare Association, Bombay, was registered only six months back before his transfer to Borivali and even though the workman was not treated as a protected workman, the management should not

have transferred him as he was the office bearer, i.e. the General Secretary of that Union, and which was a registered Union.

13. It is true that the workman had not made any representation regarding his transfer from Cotton Green to Borivali or to Mour Mandi, but as he had raised the Industrial dispute before the Asst. Labour Commissioner regarding his transfer, and as the A.L.C. had issued the necessary notice about it to the management, the management was aware of the fact that the workman did not like his transfer from Cotton Green to Borivali, or to Mour Mandi, and he had challenged it before the labour authority. According to the management, the workman was transferred from Cotton Green to Borivali as a result of reshuffle. However, in the present case, we are concerned with the transfer of the workman from Bombay to Mour Mandi. According to the management, the workman was transferred there because of the administrative exigencies, and because of the management policy regarding the transfers. However, no material has been placed on record by the management regarding the management policy of transfers. It is true that by transferring the workman from Bombay to Mour Mandi, his service conditions were not to be changed. His wages and the other service benefits were not to be reduced. However, in view of the pendency of the industrial dispute regarding his transfer from Cotton Green to Borivali before the Asst. Labour Commissioner, the management should not have transferred him from Bombay to a very far off place like Mour Mandi. It is true that the workman was transferred from Cotton Green to Borivali by the Regional Office, Bombay, and was transferred from Bombay to Mour Mandi by the Head Office. However, the Regional Office should have informed the Head Office about the pendency of the industrial dispute before the A.L.C. regarding the workman's transfer, and as such, the management should not have insisted upon the workman taking over the charge at Mour Mandi till the industrial dispute was over. Therefore, I find that the action of the management in transferring the workman from Bombay to Mour Mandi was not just and proper. I accept the contention of the workman that the management issued his transfer order to Mour Mandi as he was the active worker, and the General Secretary of his Union of the technical employees and was taking keen interest in looking to the welfare activities of the Union to safeguard the service conditions of other technical employees. Therefore, I find that the action of the management in transferring the workman from Bombay to Mour Mandi was not just and proper. Issue No. 3 is found in the negative.

14. Admittedly the workman has now already been paid his wages of 14 days of August 1989, and the bonus for the year 1988-89 in July 1990, even though paid late. As such, Issue No. 2 is therefore found in the affirmative.

15. According to the workman, the management indulged in several unfair labour practices. However, the main Issue for decision is whether the action of the management in question is just and proper. That Issue has been found as mentioned above. Hence no finding is recorded on Issue No. 1.

16. In the result the following Award is passed.

AWARD

17. The action of the management of C.W.C. Bombay in transferring Shri Digambar Singh, Tech. Assistant from Bombay to Mour Mandi with effect from 3.8.1989 is not just and proper.

18. The Management of the C.W.C. is hereby directed to transfer the workman Shri Digambar Singh to Bombay immediately, and to post him at any office in Bombay, and to pay him his full back wages, and the amounts of the other service benefits, if any due from the date he was relieved from the Cotton Green Office till the date he takes over the charge at Bombay.

19. The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer
[No. L-42011/1/90-IR (Misc.)]

नई दिल्ली, 28 अक्टूबर, 1991

का.आ.2907-—औद्योगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में, ट्रान्स्कोर टिटैनायम प्रोडक्ट्स लि., कोचुवेली के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोल्लम के पंचाट का प्रकाशित करता है, जो केन्द्रीय सरकार को 25 अक्टूबर, 1991 को प्राप्त हुआ था।

New Delhi, the 28th October, 1991

S.O. 2907.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal KOLLAM as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Travancore Titanium Products Ltd., Kochuvveli and their workmen, which was received by the Central Government on the 25-10-91.

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL,
KOLLAM (DATED, THIS THE 7TH DAY OF
OCTOBER, 1991)

PRESENT :

SRI. C. N. SASIDHARAN
INDUSTRIAL TRIBUNAL

IN

INDUSTRIAL DISPUTE NO. 67/89

BETWEEN :

The Managing Director, M/s. Travancore Titanium Products Ltd., Kochuvveli, Registered Office Trivandrum-695021.

(By Sri. G. Krishnan Nair, Advocate, Trivandrum)

AND

(1) The Secretary, Titanium Employees Association, Titanium P.O. Trivandrum.

(By Sri. R. Lakshmana Iyer, Advocate, Trivandrum)

(2) Sri. S. Vijayan, Junior Chemist, Travancore Titanium Products Ltd., Titanium P.O., Trivandrum. (Additional Party).

(By Sri. N. Krishnan Kutty, Advocate, Trivandrum)

AWARD

This industrial dispute between the above parties has been referred for adjudication by the Government of India as per Order No. L-29012/11/89-IR (Misc.) dated 26-7-1989 for adjudication the following issue.

"Whether the demand raised by the Titanium Employees Association demanding seniority in respect of Sri A. R. Chandrasekharan, Junior Chemist employed in M/s. Travancore Titanium Products Ltd., Trivandrum with effect from 22-5-1985 and restoration of his original seniority as in the lower category is legal and justified. If so, what relief is the said workman entitled to?"

2. The union espousing the cause of the workman Sri. Chandrasekharan, has filed a detailed claim Statement and the contentions are briefly as under : The workman is a member of this union. He was promoted for the Post of Junior Chemist on 14-5-86 from the category of Assistant Chemist, though he was entitled to such promotion with effect from 22-5-85. On that day his Junior Sri. S. Vijayan was promoted in violation of rules. In the category of Assistant Chemist the workman is having rank No. 15 as per the promotion list whereas Sri. Vijayan was assigned rank No. 16. The workman, Sri. K. R. Prasad and Sri. Vijayan appeared for the interview as intimated by the management for considering the promotion to the post of Junior Chemist. The three incumbents were awarded mark for service uniformly. But in respect of qualifications the

workman was given only 13 marks whereas the other two were given 15 marks each. That was due to the reason that Sri. Prasad and Sri. Vijayan were having B.Sc. degree qualification in chemistry whereas the workman was having diploma in Chemical technology. The differentiation of marks in respect of qualification is illegal and arbitrary. On the basis of the assigning of the marks Sri Vijayan, the Junior most among the three incumbents was promoted as Junior Chemist with effect from 22-5-1985. This is illegal and unsustainable. The assigning of marks and selection of candidates ought to have been based on the new Subordinate Service Rules (the Rules for short). As per the new Rules no particular mark is stipulated for qualification. Since the selection was made subsequent to the date on which the new Rules came into force the criteria laid down in the new Rules should have been followed. The action of the management is clear violation of the new Rules. There was absolutely no reason for difference between the B.Sc. degree in chemistry on the one hand and diploma in chemical technology on the other. As per Government letters dated 6-8-73 and 21-7-86 three year diploma course in chemical technology is accepted as equivalent to B.Sc. degree in Chemistry. The workman was therefore entitled to get 15 marks for qualification as in the case of Sri. Prasad and Sri. Vijayan. One Sri. K. Chellan Nadar was given 15 marks earlier in the category of junior Chemist even though he was only possessing a diploma qualification as in the case of the workman. But in the case of the workman the management had adopted a different approach. The claim of the union is that the workman is entitled to the relief of assigning of seniority in the category of Junior Chemist with effect from 22-5-85.

3. The management oppose the case of the union. The contentions of management are briefly as under. The workman joined the service of the company as a work assistant on 11-11-76 and appointed as Assistant Chemist on 21-10-77 with 14 other employees. A vacancy arose in the post of Junior Chemist on 26-3-85. Assistant Chemist is the feeder category for promotion to the post of Junior Chemist. As per the rules three candidates i.e. the workman Sri. Prasad and Sri. Vijayan were considered for promotion. The rank of seniority alone held by each in the feeder category is not a point to be considered for promotion. The workman is a diploma holder in chemical Engineering whereas the other two are graduates in chemistry. Since Sri. Prasad and Sri. Vijayan are having superior educational qualifications they were awarded 15 marks each and the workman obtained 13 marks only in respect of qualification. This was done strictly in accordance with the Rules then in force and the crucial date which is legal and proper only. Sri. Vijayan who secured the highest overall marks was promoted to the post of Junior Chemist. The eligibility of candidates for promotion is to be considered as on the date on which the vacancy arose. The crucial date in this case is 26-3-85. The Rules which came into force on 1-5-85 cannot be made applicable for filling up the vacancy that arose on 26-3-85. The Rules in force prior to 1-5-85 were to be made applicable and the management had done only that. The Superior educational qualification was also one among the criteria for promotion on the crucial date. The Rules do differentiate the allocation of marks for education qualifications. The claim so the union based on the two Government letters is not sustainable. In the promotion of Sri Chellan Nadar Rules then in force was applied. There was no differentiation between graduates and diploma holders in the rules existed then. The Rules that had been followed in instant case were valid from 1-6-1977 to 30-4-1985. According to the management the promotion of Sri Vijayan on 22-5-1985 is legal, valid and does not suffer from any informity known to law. The workman was subsequently promoted as Junior Chemist with effect from 14-5-1986 and he is not entitled to any relief in this reference.

4. Sri. Vijayan has been impleaded as additional party in this case and has filed a separate statement. The contentions are briefly as under : Sri. Vijayan was appointed as process operator by order dated 3-10-1973 in the management company and later he was appointed as Assistant Chemist with effect from 21-9-1977. The workman was promoted as work assistant on 11-11-1976 which post was below the process operator. Later he was appointed as Assistant Chemist by order dated 17-3-1978. Sri. Vijayan

along with Sri. Prasad and the workman were invited for an interview for the post of Junior Chemist and in the interview Sri. Vijayan was successful and he was accordingly promoted with effect from 22-5-1985. Sri. Vijayan and the workman have now been promoted and posted as selection grade junior chemist with effect from 22-5-1990. The present prayer of the workman cannot be allowed as the issue referred for adjudication does not contemplate allowing such a prayer. As per the relevant Rules the crucial date for eligibility of candidate for promotion is the date on which the vacancy has arisen. The crucial date is 26-3-85. On that date the criteria for promotion is the one as laid down in the Appendix III of the Rules 1977. As per the qualification of the workman and Sri. Vijayan both the entitled to get different marks as per the criteria for promotion existed on the crucial date i.e. 26-3-85. Therefore the present claim of the workman is unsustainable. The 85 Rules came into effect only from 1-5-85. But the rules applicable in the instant case was 77 Rules. The promotion given to impleaded party is absolutely legal as per Rules. The workman was not entitled to get promotion on the same day on which the impleaded party was promoted to the post of Junior Chemist. According to the impleaded party the workman is not entitled to any relief over the impleaded party.

5. The union has filed a replication refuting the contention advanced by the management and impleaded party and also reaffirming the case pleaded by the union.

6. The workman has given evidence as WW1. He has examined another workman, Sri. Chellan Nadar and the Secretary of the union as WW2 and WW3 respectively. Ext. W1 and W2 have also been marked on the side of the union. The management and impleaded party have not adduced any oral evidence. However Exts. M1 to M6 have been marked on the side of the management.

7. The claim of the union is for assigning the workman seniority in the category of Junior Chemist with effect from 22-5-85 on which date his Junior Sri. Vijayan was promoted. The claim is based on the ground that Sri. Vijayan was awarded more marks for qualifications in the interview for the post of Junior Chemist while the workman is above Sri. Vijayan in the gradation list. The management resisted this claim contending that the management has followed strictly the Rules in force when the vacancy of Junior Chemist arose i.e. 26-3-85, the crucial date. So the only question to be considered is whether the promotion given to the impleaded workman on 22-5-85 is in accordance with the Rules 1977 or that of 85. There is no dispute regarding the date on which the vacancy arose i.e. 26-3-85. The 1977 Rules have been marked as Ext. M5. The promotion policy for technical employees was as stated at sheet No. 10 in Appendix III of Ext. M5 Rules which was in force upto 1-5-85. The rules clearly say that "Eligibility of candidates for promotion will be considered with reference to the conditions existing on the date on which the vacancy arose". 1985 Rules have been marked here as Ext. M1. Chapter VI of Ext. M1 as stated at page 18 is that "Eligibility of candidates for promotion will normally be considered on the date on which the vacancy arises". It is evident from Ext. M1 that 1985 Rules came into existence only on 1-5-85. Therefore the conditions of promotion prevalent at the time of occurrence of the vacancy i.e. 26-3-85 is as stipulated in 1977 Rules. There is no case for the union that the management has not followed the procedure prescribed in the 1977 Rules in the matter of promoting Sri. Vijayan. It is thus clear that the promotion given to Sri. Vijayan to the post of junior Chemist is proper and in accordance with the Rules then in force.

8. The union has a contention that the workman did not get promotion with effect from 22-5-85 on which date Sri. Vijayan was promoted because of the difference in marks awarded for qualification in the interview. According to the union though the workman was holding a diploma in chemical Engineering and Sri. Vijayan was holding degree in Chemistry, the workman was also entitled to get same marks as there was no difference in awarding marks at that time. As I have stated earlier the criteria for promotion is the one laid down in Appendix III of the 1977 Rules. As per Ext. M5, 1977 Rules the allocation of marks for educational qualifications for the purpose of promotion three

years diploma holder is entitled to get 13 marks and graduate is entitled to get 15 marks. The management has awarded marks to the workman Sri. Vijayan as per the criteria mentioned above. The action of management is only proper and legal. So the workman cannot claim any seniority on the basis of awarding of marks for qualification and the present contention is unsustainable.

9. As have stated earlier the rules in force on the crucial date was Ext. M5, 77, Rules. The contention of the union that the crucial date regarding occurrence of vacancy has no relevancy is therefore devoid of merit as per Ext. M5 Rules it is not proved or established that the union had raised any objection with reference to the criteria laid down in the Rules for promotion. The Secretary of the union who was examined here as WW3 could not also prove that the union had raised any such objection at any point of time regarding the criteria for promotion. So this contention is also without any merit.

10. The claim of the union for promotion of the workman with effect from 22-5-85 is on the basis of Ext. M3 and Ext. M4 notices also. Ext. M3 is a notice issued by the Managing Director of management on 8-4-69 stating that diploma holders will be treated on par with those with a degree in chemistry for appointment/promotion. A notice issued by the Managing Director cannot be considered as substitute to the rules. This notice was issued while the 69 Rule was in force and in the instant case 1977 Rule alone is applicable as I have stated earlier. Ext. M3 notice has been superseded by 1977 Rules and therefore Ext. M3 will not come to the rescue of the workman. Ext. M4 is a letter from the Director of Technical Education to the management and Secretary of the union dated 27-1-86. It is stated in Ext. M4 that a diploma in Chemical technology awarded after a three year course conducted at a Government Polytechnic can be treated as sufficient qualification in lieu of the diploma in Chemical Engineering for all purposes. But Ext. M5 1985 Rules came into existence with effect from 1-5-85 and as per that Rules a distinction between degree and diploma has been omitted. Therefore Ext. M4 dated 27-1-86 also will not help the workman.

11. The claim of the union is based on yet another ground which is the promotion given to Sri. Chellan Nadar, as Junior Chemist, without distinction between degree and diploma. Sri. Chellan Nadar was given promotion in 1970 and the relevant Rules applicable was and Ext. M6, 1967 Rules wherein no distinction between degree and diploma was stipulated. But in the instance case the 1977 Rules were in existence and there was clear distinction between degree and diploma as per 77 Rules. In this circumstances the promotion given to Sri. Chellan Nadar cannot be treated as precedent in support of the claim of the union.

12. From the discussion made above it is clear that the management has strictly followed the Rules then in force while considering the promotion of the workman when the vacancy of junior chemist arose on 26-3-85 and found him not eligible for promotion with effect from 22-5-85 as claimed by the union. The action of the management is therefore legal and justified and no interference is called for from this Tribunal.

13. In the result, an award is passed holding that the demand raised by the Titanium Employees Association demanding seniority in respect of Sri. A. R. Chandrasekharan with effect from 22-5-85 is unjustified. The workman is therefore not entitled to any relief.

C. N. SASIDHARAN, Presiding Officer

[No. L-29012/2/89-IR(Misc.)]

APPENDIX

WW1 Sri. A. R. Chandrasekharan.

WW2 Sri. K. Chellan Nadar.

WW3 Sri. S. Peethambaran.

Ext. W1—Certified issued to Sri. Chandrasekharan from the Secretary State Board of Technical Education dated 21-10-74.

W2—Course and conduct certificate issued to Sri. Chandrasekharan from the Principal, Government Polytechnic, Kalamassery dated 26-8-75.

M1—Subordinate Service Rules 85.

M2—Relevant extract of Gradation list of Assistant Chemist as on 1-6-86.

M3—Photocopy of notice issued by the Managing Director of the Management dated 9-4-69.

M4—Photocopy of letter issued to the management and the Secretary of the union from the Director of Technical Education dated 27-1-86.

M5—Photocopy of Subordinate Service Rules effective from June 77.

M6—Photocopy of relevant portion of Subordinate Service Rules 67.

नई दिल्ली, 30 अक्टूबर, 1991

का.प्र. 2908.—औद्योगिक विवाद प्रक्रियाम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स. नव भारत इन्टरप्राइसिस के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रतिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29 अक्टूबर, 1991 को प्राप्त हुआ था।

New Delhi, the 30th October, 1991

S.O. 2908.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Nav Bharat Enterprises and their workmen, which was received by the Central Government on the 29th October, 1991.

ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(127)/1988

PARTIES :

Employers in relation to the management of M/s. New Bharat Enterprise Debka Takapur (Khurd) White Clay Mine Through Smt. Sudesh W/o Sudarshan Kupmar Lekhi, Lekhi Villa, Kailash Nagar, Rajnandgaon (M.P.).

Their workman, Shri Bodhan Singh S/o Sishpal Singh, Ex-Munshi, Tekbapar Khurd, P.O. Badaitola, Tah. Khairagarh, District Rajnandgaon (MP).

APPEARANCES :

For Workman—Workman in person.

For Management—Shri Arun Kakonia, Advocate.

INDUSTRY : Clay Mine. DISTRICT : Rajnandgaon (M.P.)

AWARD

Dated : October 11, 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-29012/29/88-D.III(B) dated 1st December, 1988, for adjudication of the following dispute:—

"Whether the action of the management of M/s. Nav Bharat Enterprises, Owner of Dabka Tekapur (Khurd) White Clay Mine in terminating the ser-

vices of Shri Bodhan Singh S/o Sishpal Singh, Munshi w.e.f. 1st June, 1988 is legal and justified. If not, to what relief is the workman concerned entitled?"

2. The case of the workman is that the owner, Shri S. K. Lekhi, Contractor, Nav Bharat Enterprise, Clay Mine, Village Debka, has terminated the services of the workman without any reason and notice w.e.f. 1st June, 1988. He was appointed on 1st January, 1983 and worked upto 31st May, 1988. He was appointed on monthly pay of Rs. 400 but he was being paid Rs. 275 and the balance of Rs. 125 was being deducted on the ground that as and when his services come to an end he will be paid the whole amount immediately. Although his services were terminated with effect from 1st January, 1988 without any notice he has not been paid the amount so deducted from his monthly salary in spite of assurances given to him. Thus he is entitled to Rs. 8125 from the management. The workman has prayed that the Non-applicant/management be ordered to pay Rs. 8125 to him.

3. The management has not filed its statement of claim.

4. The present reference is against the order of termination of services of the workman concerned, Shri Bodhan Singh by M/s. Nav Bharat enterprises owner of New Bharat Enterprises Debka Takapur (Khurd) White Clay Mines.

5. According to the terms of reference this Tribunal has to decide the validity of termination of service w.e.f. 1st June, 1988 and consequential relief arising out of it.

6. The statement of claim submitted by the workman is, however, against S. K. Lekhi, Contractor of the said management. The workman has only claimed difference of wages from 1st January, 1983 to 31st May, 1988 for a total period of 65 months @ Rs. 125 per month, total amounting to Rs. 8125. Thus the Contractor by name is neither a party to the dispute nor the claim is in accordance with the terms of reference. Such a claim, if any, can be made under Sec. 33-C(2) of the I.D. Act, 1947.

7. I have gone through the statement of claim and documents filed by the workman. The workman has neither challenged his termination order nor prayed for reinstatement in case termination order is found to be illegal. He has only claimed difference of wages for a particular period. Hence no relief as claimed can be granted in this case. Award is passed accordingly with no order as to costs.

V. N. SHUKLA, Presiding Officer

[No. L-29012/29/88-D.III(B)]

का.प्र. 2909.—औद्योगिक विवाद प्रक्रियाम, 1947 (1947

का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार तिरोडी मैंगनीज माईन प्राक मैंगनीज ओर (इण्डिया) लि. के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रतिकरण जबलपुर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 29-10-91 को प्राप्त हुआ था।

S.O. 2909.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tirodi Manganese Mine of Manganese Ore (India) Ltd. and their workmen, which was received by the Central Government on the 29th October, 1991.

ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(176)/1987

PARTIES :

Employers in relation to the management of Tirodi Manganese Mine of Manganese Ore (India) Ltd. P.O. Tirodi, District Balaghat

AND

New Delhi, the 31st October, 1991

Their workman Shri Maadloom Ali, s/o Shri Sayyad Ali, Car-cum-Lorry Driver, Kayachi Camp, P.O. Khairi Bijwada, Tah. Ramtek, District Nagpur (M.S.).

APPEARANCES:

For Workman—Workman in person.

For Management—Shri M. K. Venugopal.

INDUSTRY : Manganese Ore. DISTRICT : Balaghat (M.P.)

AWARD

Dated, 14th October, 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-27012/2/87-D.III(B) dated 24th August, 1987, for adjudication of the following dispute:—

“Whether the action of the management of Tirodi Manganese Mine of M.O. (I) Ltd., P.O. Tirodi, District Balaghat in dismissing Shri Maadloom Ali S/o Shri Sayyad Ali, Car-cum-Lorry Driver w.e.f. 9th May, 1986 is justified? If not, what relief the workman is entitled to?”

2. Parties contested their case with tooth and nail since the reference has been made and even prior to the reference before the Conciliation Officer. Before this Tribunal issues were framed on 27th April, 1988 and the case was fixed for arguments on preliminary issues. Parties sought several adjournments for arguing the case on preliminary issues. On 11th January, 1989 management filed some documents and an application. The case was therefore fixed for reply and hearing on application of the management dated 11th January, 1989.

3. On 9th October, 1991 the case was taken up at Nagpur at the request of the parties. Parties mutually discussed the matter and came to the following compromise:—

- (1) The workman will be paid Gratuity due to him as per Payment of Gratuity Act for the service rendered by him in the Company till the date of his dismissal from service.
- (2) No recovery will be made from the Gratuity amount so payable to him towards financial loss caused by him to the Company.
- (3) In addition to Gratuity amount accrued as per Sl. No. 1 above an amount of Rs. 5000 will be paid to the workman.
- (4) There will be no reinstatement and no back wages will be paid to him.
- (5) This will be in full and final settlement of the dispute under reference.
- (6) No costs will be paid.

4. The above terms of compromise appear to be just and fair and in the interest of the workman concerned. I therefore give my award in terms of the above compromise mutually arrived at between the parties. No order as to costs.

V. N. SHUKLA, Presiding Officer
[No. L-27012/2/87-D.III(B)]

नई दिल्ली, 31 अक्टूबर, 1991

का.प्र. 2910 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार, मैनदल बेयर-हाऊसिंग कारपोरेशन के प्रबन्धन के संबंध नियुक्तों और उनके वर्गकारों के बीच, अन्वय में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, बुबनेश्वर (उड़ीसा) के पंचरट को प्रभावित करनी है, जो केन्द्रीय सरकार को 30-10-91 को प्राप्त हुआ था।

S.O. 2910.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar (Orissa) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Warehousing Corporation and their workmen, which was received by the Central Government on the 30th October, 1991.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR
PRESENT :

Sri R. K. Dash, LL.B., Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar.

Industrial Dispute Case No. 12 of 1991 (Central)

Dated, Bhubaneswar, the 14th October, 1991

BETWEEN

The Management of Central Warehousing Corporation, Mayurlok Complex, Patna-1.

...First Party-
Management.

AND

Their workman Smt. Sumitra Devi/Bag, represented through Central Warehousing Corporation Employees Union, Patna Region, C/o Central Warehouse, Khetraipur, Sambalpur.

...Second Party-
Workman.

APPEARANCES :

Shri M. K. Kandaswami, Sr. Asst. Manager—For the First Party-management.

Sri. A. K. Naik, Secretary of the Union—For the second party-workman.

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred upon them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 and by their order No. L-42012/5/90-IR(Misc.) dated 27th March, 1991 have referred the following dispute for adjudication by this Tribunal:

“Whether the Central Warehousing Corporation Employees Union is justified in demanding regularisation of services of Smt. Sumitra Devi/Bag, Part-time Sweepers of Central Warehousing Corporation, Sambalpur, At/P.O. Sambalpur, District Sambalpur? If so, to what relief the workman is entitled to and from which date?”

2. This case had been posted to 28th September, 1991 for further orders. On 23rd September, 1991 both the parties filed a tripartite settlement and stated that they have already settled the dispute out of court and prayed to pass an award accordingly. They also stated that the settlement has been arrived at between the parties in presence of the Asst. Labour Commissioner, Rourkela and the same has already been acted upon by both the parties.

3. The terms of the settlement are read over and explained to the parties to which they admit to be true and correct. The settlement appears to be fair and the same is recorded. Hence, I pass this Award in terms of the settlement which do form part of the Award.

R. K. DASH, Presiding Officer
[No. L-42012/5/91-IR(Misc.)]
B. M. DAVID, Desk Officer

FORM-II

(Sec Rule-58)

MEMORANDUM OF SETTLEMENT DATED 12TH
APRIL, 1991 IN BETWEEN THE MANAGEMENT OF

CENTRAL WAREHOUSING CORPORATION, PATNA REGION, PATNA AND THEIR WORKMEN REPRESENTED THROUGH CENTRAL WAREHOUSING CORPORATION EMPLOYEES' UNION, PATNA REGION OVER THE DEMAND FOR REGULARISATION TO SMT. SUMITRA DEVI, PART-TIME SWEEPRESS, CENTRAL WAREHOUSING CORPORATION AT CENTRAL WAREHOUSE, SAMBALPUR ON REGULAR ROLL OF CORPORATION

Representing Employer :

1. Shri M. Barwa,
Asst. Manager (Admn.),
Central Warehousing Corporation,
Regional Office, Patna.
2. Shri K. P. Acharyulu,
Warehouse Manager,
Central Warehouse,
Sambalpur.

Representing Workman :

1. Shri A. K. Nayak, Secretary,
Central Warehousing
Corporation Employees
Union, Patna Region.
2. Shri M. D. Barik,
Unit Secretary,
Central Warehouse,
Sambalpur.

SHORT RECITAL OF THE CASE

The Secretary, Central Warehousing Corporation Employees Union, Patna Region, in his letter dated 8th May, 1990 raised an industrial dispute demanding regularisation of Smt. Sumitra Devi, Part-time Sweepress of Central Warehousing Corporation, Sambalpur in employment by the management of Regional Manager, Central Warehousing Corporation, Patna Region. The dispute was admitted in conciliation and conciliation proceedings were held on various dates. In spite of frantic efforts and several rounds of discussions, since there was hardly any scope of amicable settlement, the conciliation proceedings ended in failure and failure of report of conciliation was submitted to the Secretary to Government of India, Ministry of Labour, New Delhi endorsing copies thereof to both the parties.

While the failure report of conciliation was pending before the Government to consider for a suitable reference, the Personnel Manager, Central Warehousing Corporation, New Delhi in his letter dated 30th January, 1991 and the Regional Manager, Central Warehousing Corporation, Patna Region, Patna in his letter dated 27th February, 1991 requesting to re-open the conciliation proceedings to arrive at a settlement by offering regular appointment to Smt. Sumitra Devi as Sweepress in the Corporation. Although the conciliation proceedings ended in failure and report under Sub-Section (4) of Section 12 of Industrial Disputes Act, 1947 was submitted on receipt of the above request of the management, in the larger interest of the workman the conciliation proceedings was re-opened and notices were issued to the parties to attend the conciliation today i.e. on 12th April, 1991.

In the meanwhile, Government of India, Ministry of Labour, New Delhi in their letter dated 27th March, 1991 received in this office on 10th April, 1991 have referred the

dispute to the Industrial Tribunal, Orissa, Bhubaneswar on the following terms of reference.

"Whether the Central Warehousing Corporation Employees Union is justified in demanding regularisation of services of Smt. Sumitra Devi/Bag, Part-time Sweepress of Central Warehousing Corporation, Sambalpur, At/PO Sambalpur, District Sambalpur? If so, to what relief the workman is entitled to and from which date?"

In view of the above reference parties to the dispute attending the conciliation proceedings today i.e. on 12th April, 1991 who are advised to sign the bi-partite settlement to submit the name before the Tribunal to pass an award accordingly. But in course of discussions, parties to the dispute jointly requested in the interest of the workman as well as of the organisation to allow them to sign a tripartite settlement. The representative of workman categorically stated that since management has agreed on principle to regularise the services of Part-time Sweepress, Smt. Sumitra Devi in employment and since it would be much hardship for the workman to attend Tribunal and await till an award is passed, the conciliation settlement should be arrived at but extend substantial relief to the workman immediately.

In the circumstances stated above, it is decided to sign a conciliation settlement on the following terms as agreed upon by and between the parties.

Terms of Settlement

- (i) It is agreed by and between the parties that the services of Smt. Sumitra Devi/Bag, Part-time Sweepress shall be regularised on regular roll of the Central Warehousing Corporation at Central Warehouse, Sambalpur with retrospective effect from 1st April, 1991 in the appropriate scale of pay at par with similarly placed employees.
- (ii) It is agreed by the management not to insist to production of no objection certificate from the Employment Exchange.
- (iii) It is agreed by the union not to claim or raise any dispute for back wages or benefits of any kind on account of part-time past services as part-time Sweepress.
- (iv) Both the parties agreed to file this conciliation settlement jointly before the Industrial Tribunal, Orissa, Bhubaneswar to pass an Award accordingly.

SIGNATURE OF THE PARTIES

Signature of the Management

1. Sd/- (Illegible)
2. Sd/- (Illegible)

Signature of the workman/Union:

1. Sd/- (Illegible)
2. Sd/- (Illegible)

S. N. MISHRA, Asstt. Labour Commissioner (Central)
Rourkela-cum Conciliation Officer

Witnesses:

1. Sd/- (Illegible)
2. Sd/- (Illegible)

CENTRAL WAREHOUSING CORPORATION
(A GOVT. OF INDIA UNDERTAKING)
JOINING REPORT

I beg to report myself for duty in Central Warehousing Corporation as a Sweepress with effect from the 1st April 1991

I also furnish below particulars regarding myself :

- | | |
|-------------------------------|-------------------|
| 1. Name | SMT. SUMITRA BAG. |
| 2. Father's Name/Husband Name | Shri Madhu Bag |

- | | |
|--|---|
| 3. Nationality | INDIAN |
| 4. Date of Birth (Proof should be produced) | 32 years (2-7-1959)
Certificate send to F.O, Patna, through WM. C/o SBP wel letter No. Cw/Swp/F-1/88-89/423 dt 23-8-88 |
| 5. Present Address | Central Warehouse, Khetrajpur, Sambalpur-3. |
| 6. Whether belongs to Scheduled Caste/Scheduled Tribe (Proof should be produced) | S. Caste |
| 7. Permanent Address (Home Town) | Daldali Para, Khetrajpur, Sambalpur-3. |
| 8. Previous post(s) held if any with dates | As a part time Sweepress w.e.f. 1-8-88. |
| 9. Whether married or unmarried | Married. |
| 10. Educational qualifications (Original certificate should be produced) | Un-educated. |
| 11. Personal marks of identification | Black spot near right eyes. |
| 12. To be filled in by displaced persons from areas now in Pakistan. | — |

(a) Date of migration to India —

(b) In the case of those who migrated to India before the 19th July, 1948. I certify that I migrated to India on ———— and have been continuously residing in India from the date.

(c) If the date of migration is on or after 19th July, 1948

I certify that I migrated to India on ———— but have registered myself as a citizen of India in accordance with the rules ———— (the certificate of registration or an attested copy thereof to be produced).

(d) In the case of those who have not acquired Indian Citizenship (i.e. those who do not come under (b) or (c) above).

I have not acquired Indian Citizenship under the provision of the constitution and I request the certificate of eligibility in my favour for appointment under the Government of India may be issued (strike out declaration not applicable).

Signature R.H. of Smt. Sumitra Bag.
Designation Sweepress
Station Central Warehouse, Sambalpur

नई दिल्ली, 20 अक्टूबर, 1991

का.प्र. :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, प्रत्यक्ष में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रतिक्रिया, अहमदाबाद के पंचायत की प्रकाशित करती है, जो केन्द्रीय सरकार की 28-10-91 की प्राप्त हुआ था।

New Delhi, the 29th October, 1991

S.O. 2911.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the Industrial Disputes between the employers in relation to the management of Food Corpn. of India and their workmen, which was received by the Central Government on 28-10-1991.

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 31/89

Smt. Kiran Vs. F.C.I.

For the workman—Shri B. N. Sehgal.

For the management—Shri S. K. Hiraji.

AWARD

Central Government vide Gazette notification No. L-42018/17/88 dated the 1st March, 1989 issued U/s 10(1)(d) of the I.D. Act, 1947 referred the following dispute to this Tribunal for decision:

“Whether the action of the management of Food Corporation of India, Regional Office, Punjab, in retrenching Smt. Kiran temporary typist at their R.O. w.e.f. 3-4-1988 is justified? If not, to what relief the workman concerned is entitled and from what date?”

2. Case of the workman as set out in the claim statement is that she continuously worked with the respdt. management as typist from 10-6-86 to 2-4-88 on daily wages basis @Rs. 23.80 per day. Her conduct was good and her services were retrenched by the respdt. w.e.f. 3-4-1988. It was stressed that the said retrenchment was illegal, wrong, arbitrary and malafide and against the principal of natural justice as the respdt. management was required to serve three months notice in writing as provided U/s. 25-N of the I.D. Act, 1947 and the same was not done. It was further stressed that it was incumbent upon the management to prepare seniority list and to paste the same on notice board at least seven days before the actual date of the retrenchment such as the employer did not do so thus violates the mandatory provision 77 of the Industrial Disputes (Central) Rules, 1957. It was further pleaded that the retrenchment

was malafide as the several vacancies of typists existed with the employer. The employer indulge in unfair labour practice. The respdt. management never offered any notice, notice pay and retrenchment compensation and thus violates the provisions of Section 25-F of the I.D. Act, 1947. It was further pleaded that the junior to the present petitioner of the same category were retained in service and thus has caused the violation of Section 25-H of the I.D. Act 1947 and prayed that she is entitled to re-instatement with full back wages.

3. Claim of the petitioner was contested by the management and they filed written statement. The stand was taken that respdt. fully complied with the provisions of Section 25-F of the I.D. Act, 1947. Her services were dispensed with effect from 2-4-88 and an amount of Rs. 1451.80 on account of retrenchment compensation and one month pay in lieu of notice was handed over to her on the same day and the same was accepted by her and cheque was encashed. On merits it was denied that the workman was engaged against the regular vacancy. At the time of appointment it was made clear to her that appointment is of a purely temporary nature on daily wage basis and she accepted the terms and conditions. It was submitted that rules and staff regulation of the Respdt. are not applicable to the casual, daily rated worker. Further the management took the stand that since respdt. management is not a factory where any manufacturing process is carried on, the question of complying with the provisions of Section 25-N does not arise. Further stand was taken that the for the daily rated worker no seniority list is maintained. The violation of Section 25-H was also denied as no casual typist junior to the petitioner was retained and prayed for the dismissal of the reference.

4. Replication was also filed reiterating the claim made in the claim statement.

5. The petitioner in support of her case filed her affidavit as Ex. W1 in evidence in which she repeated the same facts narrated in the statement of claim and produced herself as WW1. In cross-examination she admitted that she was a daily wagger. She also admitted that she received a cheque in lieu of retrenchment compensation and that cheque was encashed by her. She has also stated that other typists who were recruited on daily wage basis and were appointed along with her also relieved on the same day. The Respdt. management produced Shri Baldev Singh Deputy Manager who filed his affidavit Ex. M1 and also relied on documents Ex. M2 the acknowledgement of the petitioner having received Rs. 1451.80 and the documents Ex. M3 to M9.

6. The petitioner also filed written arguments and stress has been laid that Section 25-N of the I.D. Act is applicable in the present case since more than 100 workers are working with the Respdt. management and under the circumstances three months notice is required to be served and three months pay in lieu of said notice is required to be paid which has not been done and thus violates provision of Section 25-N of the I.D. Act, 1947. I however do not accept the contention put forward by the petitioner for the reasons that merely 100 workers are working with respdt. management does not attract Section 25-N of the I.D. Act, 1947. Section 25-N(1) corresponds to Section 25F but these two provisions are mutually exclusive because the former applies only to the establishment to which the Chapter VB apply viz. 'Industrial establishment' defined in Section 25-I, employing 100 or more workers. Section 25-I is reproduced as under :

"(a) Industrial establishment means—(i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948),

(ii) a mine as defined in clause (i) of Sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952) or

(iii) a plantation as defined in clause (f) of Section 2 of the Plantation Labour Act 1951 (69 of 1951).

(b) notwithstanding anything contained in sub clause (ii) of Clause (a) of Section 2—

(i) in relation to any company in which not less than fifty-one per cent of the paid up share capital is held by the Central Government, or

(ii) in relation to any corporation (not being a corporation referred to in sub-clause (i) of clause (a) of Section (2) established by or under any law made by the Parliament, Central Government shall be the appropriate Government."

7. After perusing this section these provisions therefore do not apply to an establishment which is not a factory, mine or plantation because such an establishment is not an 'industrial establishment as defined. Here the provisions of this chapter will not apply to cover the establishment even if it employs 100 or more workmen. Certainly since the FCI, the activities are confined only to the procurement of the wheat storage and the supply, there are no industrial activities and there also not carried any manufacturing process and this does not fall within the clause (a) of Section 25-L of the I.D. Act and therefore the present case squarely falls under Chapter VA of the I.D. Act and Section 25F attracts Admitted position is that at the time of retrenchment an amount of Rs. 1451.80 was paid to the petitioner on account of retrenchment compensation and pay in lieu of notice which she voluntarily accepted and therefore, there is no violation of Section 25-F of the I.D. Act.

8. Another plea raised by the petitioner is violation of Section 25-H that some junior has been retained after her retrenchment is also devoid of any force as the petitioner has not led any evidence to this effect.

9. In view of the discussion made in the earlier paras, there is no violation of Section 25-F of the I.D. Act, 1947 and the retrenchment is in accordance with law and no interference is called for. Ministry be informed.

Chandigarh.

ARVIND KUMAR, Presiding Officer

9-9-1991.

[No. L-42012/17/88-D.IV(B)]

नई दिल्ली, 30 अक्टूबर, 1991

का.प्रा. 2912:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यू केन्दा कोलियरी प्राफ डी.सी. लि. के प्रबन्धन के संबंध निोजकों और उनके कर्मचारों के बीच, प्रबन्ध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-10-91 को प्राप्त हुआ था।

New Delhi, the 30th October, 1991

S.O. 2912.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of New Kenda Colliery of E.C.L. and their workmen, which was received by the Central Government on the 29-10-1991.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 8/91

PRESENT:

Shri N. K. Saha, Presiding Officer.

PARTIES:

Employers in relation to the Management of New Kenda Colliery of M/s. E.C. Ltd.

AND

Their workman.

APPEARANCES :

For the Employers—Sri P. K. Das, Advocate.

For the Workman—Sri Sanjiv Banerjee, Asstt. Secretary of the Union.

INDUSTRY : Coal.

STATE : West Bengal.

Dated. the 10th October, 1991

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012(229)/89-IR(C.II) dated 9-1-1990.

SCHEDULE

"Whether the action of the Management of New Kenda Colliery of M/s. Eastern Coalfields Ltd., in denying regularisation to S/Shri R. P. Barnwal, D. S. Shukla, Pranab Bhattacharjee, Shaktipada Adhikary, Dulal Chakraborty, Uma Shankar Roy, General Mazdoors and Subh Narayan Mishra, W/Operator Bipradas Mukherjee, E/Helper in clerical posts is justified? If not, to what relief are the concerned workmen entitled?"

2. Today (10-10-91) Sri Sanjiv Banerjee, Asstt. Secretary of the union files a petition stating that the dispute has been amicably settled between the parties out of Court and the union is no more interested to contest the dispute.

3. In the circumstances I have no other alternative but to pass a no dispute award in this case and accordingly a no dispute award is passed.

N. K. SAHA, Presiding Officer

[No. 22012(229)/89-IR(C.II)]

का.घा. 2913 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्डियन मी. लि., कानून परीया के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-10-91 को प्राप्त हुआ था।

S.O. 2913.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of W.C. Ltd., Kanhan Area and their workmen, which was received by the Central Government on 29-10-91.

ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT JABALPUR (M.P.)
Case No. CGIT/LC(R)/(234)/1990

PARTIES :

Employers in relation to the management of W.C. Ltd., Kanhan Area, Damua Colliery, Post Damua, District Chhindwara (M.P.) and their workman Shri Shiv Prasad S/o Jagdeo D.P.R. Worker, represented through the General Secretary, M.P. Koyala Khadan Mazdoor Panchayat (HMS), Post Junnardeo, Distt. Chhindwara (M.P.).

APPEARANCES :

For Workman/Union—None.

For Management—Shri R. Menon, Advocate.

INDUSTRY : Coal Mining DISTRICT : Chhindwara (M.P.)

AWARD

Dated : October 11th, 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-22012(200)/90-IR(C-II) Dated 4-12-1990, for adjudication of the following dispute:—

"Whether the action of Deputy Chief Mining Engineer, Damua Group of WCL, Kanhan Area, P.O. Damua, Distt. Chhindwara (M.P.) in stopping Shri Shivprasad S/o Jagdeo D.P.R. Worker of Damua Colliery, P.O. Damua, Distt. Chhindwara from his duties w.e.f. 28-3-1985 and not allowing him to report to his duties like other 440 DPR workers who were appointed in the year 1984 is justified? If not, to what relief the concerned workman is entitled to?"

The above reference order dated 4-12-1990 was received in this Tribunal on 12-12-1990. Notices were issued to the parties for filing their respective statement of claim etc. but neither party filed their respective statement of claim. Workman or his representative did not attend the Tribunal on any dates.

2. However Shri R. Menon, Counsel for management filed a Photocopy of Memorandum of Settlement dated 27-11-90 duly signed by the Management Officers, Shri G. N. Shah, Union representative and the workman himself. Counsel for management verified the settlement. It appears that because of the settlement arrived at between the management and the workman, the workman did not take interest in the present reference and for that reason nobody appeared on behalf of the Union also. The terms of Settlement are as under:—

1. It is agreed by both parties that we have no objection, if Shri Shiv Prasad, Ex. Badli Tub Loader Damua Colliery will be provided time rated job of Gen. Maz. Cat. I in Nagpur Area.
2. He will not be entitled for any back wages from the date of his idleness till he joins at Nagpur Area.
3. It is agreed by both the parties that union as well as workman will not raise any dispute before any authority.
4. It is mutually agreed that in case the case is referred to CGIT for adjudication in that case, this Settlement will be filed before the CGIT, for consent award.
5. It is agreed by both the parties that the settlement will not be treated as a precedence in any other case.
6. This is a full and final settlement for employment of Shri Shiv Prasad S/o Jagdeo, Ex-Badli Tub Loader, of Damua Colliery.
7. It is agreed by the management to implement the above settlement within one month time from the date of receipt of Medical Report from the Company Medical Authority.

3. The terms of Settlement as incorporated in the Memorandum of Settlement and quoted above appear to be just, fair and legal. I therefore record my award in terms of settlement and make no order as to costs.

V. N. SHUKLA, Presiding Officer
[No. L-22012/200/90-IR(C-II)]

नई दिल्ली, 31 अक्टूबर, 1991

का.प्र. 2914 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अधजल-II यूनिट आफ गिरमिन्ट कोलियरी आफ में. ई. सी. एल. के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसंसोल के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 30-10-91 का प्राप्त हुआ था।

New Delhi, the 31st October, 1991

S.O. 2914.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the mgt. of Adjai-II Unit of Girmint Colliery of M/s. E.C.Ltd., and their workmen, which was received by the Central Government on 30-10-1991.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL, ASANSOL
Reference No. 20/89

PRESENT :

Shr N. K. Saha, Presiding Officer.

PARTIES :

Employers in relation to the Management of Adjai-II
Unit of Girmint Colliery of M/s. E.C. Ltd.

AND

Their workman

APPEARANCES :

For the Employers—Sri P. Banerjee, Advocate.

For the Workman—Sri B. Kumar, Joint Secretary of the Union.

INDUSTRY : Coal.

STATE : West Bengal.

Dated, the 9th October, 1991

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012(186)/88-D.IV.B dated the 27th April, 1989.

SCHEDULE

"Whether the action of the Management of Adjai-II Unit of Girmint Colliery, Sripur Area of M/s. Eastern Coalfields Ltd., P.O. Charanpur, Dist. Burdwan in terminating the services of Sri Anil Dey, Lamp Chageman on the ground of superannuating w.e.f. 1-7-1988, was justified? If not, to what relief the workman concerned is entitled?"

2. The case of the union in brief is that Sri Anil Dev the concerned workman was Lamp Chageman of Adjai-II Unit of Girmint Colliery, Sripur Area under M/s. Eastern Coalfields Ltd. He joined in the service in 1945 before nationalisation and as per Mines Rules his service particulars including his year of birth were recorded in the statutory register known as 'B' Form Register. In the said 'B' Form Register and also in the Form 'A' of the Provident Fund Account his year of birth had been recorded as 1930. After nationalisation he was given an Identity Card showing his year of birth as 1930. But subsequently he came to know that in the reconstructed 'B' Form Register his year of birth has been recorded as 1928. He immediately lodged a complaint on 31-1-1988 and requested the management to retain his year of birth as 1930 or alternatively to get his age 2968 GI/91—3

assessed under the guidelines formulated by J.B.B.C.C.I. The union on behalf of the workman also made such request. But the management did not pay any heed to the request of the workman and union and his service was terminated w.e.f. 1-7-88 on the ground of superannuation taking into account of the entry in the reconstructed 'B' Form Register.

3. The attempts of conciliation failed. The matter was sent to the Ministry of Labour and ultimately the matter has been referred to this Tribunal for adjudication.

4. The case of the management in brief is that the averments made by the concerned workman are false. His year of birth was correctly recorded as 1928 in the 'B' Form Register. In 1987 he was served with service excerpts showing his year of birth as 1928. He submitted that service excerpts putting his signature without raising any dispute regarding his year of birth as mentioned in the same. He was rightly superannuated w.e.f. 1-7-88.

5. The management has produced the 'B' Form Registers which were re-constructed after nationalisation Exts. M-3 and M-4. In these registers the year of birth of the concerned workman has been recorded as 1928. The management has also produced the service excerpts Ext. M-1 which was duly signed by the concerned workman. In this service excerpts his year of birth has been recorded as 1928. By placing and referring those documents the learned lawyer for the management has left no stone unturned to convince the Tribunal that the year of birth of the concerned workman was rightly recorded as 1928. He has further urged before me that Sri Anil Dey the concerned workman is a literate man and he has put his signature in English on all the documents and from that this Tribunal should conclude that the workman put his signature knowing fully that his year of birth was recorded as 1928. He has further urged before me that as the concerned workman did not raise any dispute earlier he is not entitled to get any relief in this Reference case.

Be that as it may, the workman has produced his Identity Card Ext. W-1. In that Identity Card his year of birth has been recorded as 1930. The learned lawyer for the management has urged before me that this document has been manufactured for the purpose of this case. But considering the nature and condition of the document (Identity Card) I am unable to look eye to eye with the learned Lawyer for the management. Sri P. Mahanti MW-1 has admitted that Sri Anil Dey was an employee from before nationalisation and there was a 'B' Form Register before nationalisation. But the management has failed to produce the 'B' Form Register which was prepared before nationalisation on the plea that the said register is not traceable. But the fact remains that the management has failed to produce the earliest document regarding the age of the workman. We find from the statement of the concerned workman that he read only upto Class IV. In my opinion it will be against prudence to hold that he understood everything of the document before putting his signature.

6. Weighing the evidence on record and considering the facts and circumstances of the instant case. I find that in a case like the present one, the workman must be given an opportunity to get his age assessed through Age Assessment Medical Board as there are two sets of documents showing his year of birth both as 1930 and 1928. But I must say that the workman did not raise the dispute at the earliest opportunity. So he must be penalised in some form.

7. In the result I find that the termination of service of Sri Anil Dev the concerned workman on the ground of superannuation w.e.f. 1-7-88 was not justified. The management shall refer the concerned workman to Apex Medical Board for determination of his age.

(a) If the Apex Medical Board finds that the workman attained the age of 60 years in 1988, then the workman shall not get any relief in this case.

(b) But if the Apex Medical Board finds that Sri Anil Dey attained the age of 60 years after 1-7-88, then the workman shall get 50% of the wages for the period from 1-7-88 till the date of attaining

the age of 60 years and the rest 50% (fifty percent) of the wages shall stand forfeited as he did not raise any dispute at the earliest opportunity.

This is my Award.

N. K. SAHA, Presiding Officer
[No. L-22012(186)/88-DIV (B)]
RAJA LAL, Desk Officer

नई दिल्ली, 20 अक्टूबर, 1991

का.आ. 2915 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यू बैंक आफ इण्डिया के प्रबन्धसंस्थ के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-10-91 को प्राप्त हुआ था।

New Delhi, the 29th October, 1991

S.O. 2915.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of New Bank of India and their workmen, which was received by the Central Government on 24-10-91.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 213 of 1989

In the matter of dispute :

BETWEEN

Shri Naresh Chandra C/o Shri V. K. Gupta 2/363
Namnair Agra.

AND

Deputy General Manager New Bank of India C/o M.G.
Marg Lucknow.

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-12012/123/89-D.II (A) dated 1-9-89, has referred the following dispute for adjudication to this Tribunal :—

Whether the Branch Manager, New Bank of India, Mainpuri was justified in terminating the services of Shri Naresh Chand as subordinate staff w.e.f. 16-3-88 ? If not, to what relief the workman was entitled ?

2. The case of the workman in short is that he was appointed against a permanent vacancy at Mainpuri Branch of the bank in October, 1979. Despite his posting as peon in the said branch he was not paid salary of the peon as per bipartite settlement. His services were discontinued by the management w.e.f. 16-3-78 (should be 16-3-88) despite his excellent work and conduct without notice or notice pay and payment of retrenchment compensation. The action of the management in terminating his services is illegal and as such he is entitled to his reinstatement with full back wages.

3. The case is contested by the management of the bank. The management plead that the workman had worked as temporary employee at bank's Mainpuri Branch for 77 days during 1979 to 1982 as per details given in para (1) of the written statement at page (2). In fact during the said period no regular vacancy existed in the said branch. After 1982, he simply worked as a Waterboy for filling drinking water in the Mainpuri Branch in the years 1984 to 1987. In the beginning at the rate of Rs. 10 per fortnight and subsequently at the rate of Rs. 20 per fortnight. During the period 1984 to 1987 there did not exist the relation of employer-employee between the parties. In the circumstances there was absolutely no need either to

give him notice or pay him notice pay besides retrenchment compensation.

4. In fact there had been no termination of his services as alleged by the workman. Regular recruitment in the banks is made as per Government Policy and after satisfying other eligibility criteria. The workman's name was never sponsored by the employment Exchange.

5. In his rejoinder, the workman alleges that he had continuously worked for about 10 years as waterboy cum messenger. No other new plea has been raised by him in the rejoinder.

6. In support of their cases both sides have adduced oral as well as documentary evidence. Whereas the workman has examined himself the management have examined Shri S. K. Srivastava an officer of the bank.

7. In para 1 of his affidavit the workman has deposed that during the period October 1979 to 1982, he had worked for 79 days. In para 2 of his cross examination, he has deposed that for these 79 days he had worked as a temporary workman. In the written arguments filed on behalf of the workman by Shri V. K. Gupta, it is stated that the workman was appointed in leave vacancies during 1979 to 1982.

8. The above facts thus go to show that his appointment was temporary and that too was in leave vacancies and not as permanent employee against permanent vacancy. Hence, I find that the case set up by the workman in the claim statement that he was appointed as a peon and changed in the rejoinder by alleging that he was appointed as messenger cum water boy against a permanent vacancy is not correct.

9. The dispute between the parties is with regard to the subsequent period upto 15-3-88. The management's case is that he was engaged as a water boy for filling drinking water at the rate of Rs. 10 per fortnight which was subsequently raised to Rs. 20 per fortnight. On the other hand as already remarked he has nowhere alleged in the claim statement that he had even worked as a water boy. It was however, for the first time in his rejoinder that he came out with the case that he had worked as messenger cum waterboy for more than 10 years. In para (3) of his affidavit he has referred to the nature of duties performed by him. The duties described by him are distribution of DAK taking bank's books from one table to another and filling water and serving water.

10. During his cross examination the workman was confronted with two voucher the photostat copies of which were filed under the orders of the Tribunal by the management on the very date of his cross examination i.e. on 25-1-91. These vouchers are dated 3-10-83 and 16-2-87. The workman has admitted his signatures on them. The voucher dated 16-2-87 shows that he was paid Rs. 20 for filling water for the period 1-2-87 to 15-2-87, the second voucher is dated 9-10-83. It shows that he was paid Rs. 10 for water filling. These two vouchers coupled with the statement of the workman corroborates the management's case set up in para 2 of the written statement that after 1982 for filling drinking water he was paid at the rate of Rs. 10 per fortnight in the beginning and then at the rate of Rs. 20 per fortnight.

11. The question is whether Shri Naresh Chand was getting wages for filling drinking water separately from the wages which he was getting for the service rendered by him as messenger. At the very outset I may state that this is not the case of Shri Naresh Chandra. No attempt has been made from his side to summon the bank's record to prove that he was getting some wages every month from the bank for the services rendered by him as messenger.

12. From the side of Shri Naresh Chand reliance has been placed on the document. Annexure Kha-1 filed by Shri Naresh Chand with his affidavit. It is the photo copy of letter purported to have been written by the Manager Mainpuri Branch to the Assistant General Manager Regional Office Lucknow. It was written with regard to

Shri Naresh Chand. With this letter was enclosed an application received by the management from Shri Naresh Chand for appointment to the post of peon lying vacant in the branch. In the letter it is shown that from October, 1979, to June 1982 he had worked for 79 days only as a temporary peon. Then it is written that he was working as Water Boy regularly and was also performing the duties of a peon in day to day working. By means of this letter the branch manager purports to have strongly recommended his application for his appointment as peon.

13. In his cross examination it was put to Shri Naresh Chand that no such letter was written by the branch manager of the Mainpuri Branch of the bank. To the said question he replied that the original letter was given to him 4-5 years ago by Shri S. K. Srivastava, whose signature it bore. He was then working as officiating manager. Subsequently he changed and said that officiating manager gave him photo stat copy and not the original which would be with the bank.

14. The management have examined Shri S. K. Srivastava, in defence. In para 2 of his affidavit he has deposed that he was posted at Branch Office Mainpuri as officiating Manager from May 1984 to July 1985. In para 3 of his affidavit he has deposed that he has been shown the photo-stat copy of the above letter. The signatures on this photocopy appears to be his but so far as he remembers no such letter was ever written by him to the Regional Office Lucknow. It does not bear the serial number and even the date of despatch. The original or its copy is neither available in the Regional Office, Lucknow, nor in the branch office at Mainpuri. He was also cross examined with regard to it. In para 2 of his cross examination he has deposed that the signatures on Annexure Kha-1 looks to be his. He has confirmed the other facts deposed to by him in para 3 of his affidavit such as about non availability of the original or its copy in the bank's branch at Mainpuri or in the Regional Office, Lucknow.

15. After considering the facts and circumstances document Annexure Kha-1 appears to me to be of doubtful character. Had it been written by Shri S. K. Srivastava, management's witness to the AGM Regional Office Lucknow, it would have surely borne the date and serial number of despatch. Moreover, if the work of a peon or messenger had been taken from him he would have surely summoned the vouchers regarding payment of wages to him for the period in question to prove that apart from the wages received by him for the job of filling drinking water he was also paid wages, may be less than that of a regular employee, for the duties of peon/messenger performed by him. In para 5 of his affidavit he has deposed that he was getting Rs. 15 a day for the duties of messenger performed by him besides Rs. 40 per month for filling water. Had he been a messenger cum water boy the question of payment of Rs. 40 per month separately for filling drinking water would not have arisen at all.

17. In the alternative if document annexure Kha-1 is treated as a genuine document. Then also Shri Naresh Chand does not get any benefit out of it. From document Kha-1 it becomes clear that the appointing authority of a peon is AGM and not the branch manager. There is no document or evidence from the side of Shri Naresh Chand to prove that the AGM ever agreed to his appointment as peon. So in case he had been appointed as a peon/messenger by the branch manager his appointment was illegal. For this I may refer to a few Rulings. In the Manager State Bank of Indore, Kanpur Versus Presiding Officer, Central Government Industrial Tribunal, Kanpur 1990 (66) FIR 672 at page 677, it was observed by his Lordship of the Allahabad High Court that where an officer has no right to a post or to a particular status but if the authority acts beyond its competence, giving him that status which authority was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given a particular status.

18. Again in Rita Mishra and other Versus Director Primary Education Bihar and others AIR 1988, Patna 26(FB) it was held that right to salary pension and other service benefits springs from a valid and legal appointment to the post. Once it is found that the very appointment is illegal

and is honest in the eye of law no statutory entitlement for salary or consequential rights to pension and other monetary benefits can arise.

19. Lastly, in Frnalloor Service Cooperative Bank Limited Vs. Labour Court and others 1987 II LLJ 492 (Kerala) it was held that appointments made without obtaining the prior approval of the Registrar of Cooperative Societies will be declared as appointments made without an authority of law and hence void abinitio. Contract of service in such cases can be terminated even without any inquiry. Any appointment which is void abinitio will not attract the provisions of section 25-F of the I. D. Act.

20. In this case it could be that the officiating Manager Shri S. K. Srivastava and the managers who were posted prior to him might have been taking personal work from Shri Naresh Chand and giving him false hope that they would get him appointed as peon in the bank and when pressed hard by Shri Naresh Chand, MW Shri S. K. Srivastava in order to put off the matter and satisfy his whims might have written such letter and gave him a photo copy of it without actually posting it to the AGM, Regional Office, Lucknow. If such was a case, Shri Naresh Chand should seek his remedies against those manager before competent court of law.

21. Hence it is held that there had been no termination of services of Shri Naresh Chand w.e.f. 16-3-85 by the management of the bank as alleged by him. After 1982 he was simply engaged for filling drinking water as pleaded by the management and such engagement did not confer upon him any vested right under law on its discontinuance.

22. Reference is decided, accordingly, holding that the workman Shri Naresh Chand is entitled to no relief.

[No. L-12012/123/89-D.II (A)]

ARIAN DEV, Presiding Officer

का.आ. 2915 :--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुवर्ग में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंध में निम्नलिखित और उनके कर्मचारियों के बीच, अनुवर्ग में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचद को प्रकृति करती है, जो केन्द्रीय सरकार का 24-10-91 को प्राप्त हुआ था।

S.O. 2916.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 24-10-1991.

ANNEXURE

BEFORE SHRI ARIAN DEV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 121 of 1987

In the matter of dispute :

BETWEEN

The State General Secretary U.P. Bank Employees Union
36/1 Kailash Mandir, Kanpur.

AND

The Manager Punjab National Bank Birhana Road,
Kanpur.

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-12012/64/86-D.IV (A) dated 27-8-87, has referred the following dispute for adjudication to this Tribunal for its adjudication :--

Whether the action of the management of Hindustan Commercial Bank Ltd. (now PNB) in denying the

appointment to Shri A. K. Mishra on the post of Cashier cum Godown Keeper instead appointing him as peon in violation of settlement dated 5-7-82 is fair and justified? If not, to what relief the workman concerned is entitled?

2. The industrial dispute on behalf of the workman Shri A. K. Mishra has been raised by the State General Secretary of U.P. Bank Employees Union (hereinafter referred to as Union).

3. The admitted facts are that Shri Sangam Lal Mishra deceased brother of workman Shri A. K. Mishra died on 14-2-78 leaving behind his wife and three minor children. At the time of his death Shri Sangam Lal Mishra was posted as cashier cum godown keeper at Arya Nagar Branch Kanpur of the erstwhile Hindustan Commercial Bank Limited which bank stood amalgamated with PNB (Punjab National Bank) in terms of the Government Notification dated 18-12-86. The management of the erstwhile Hindustan Commercial Bank Limited on compassionate grounds gave the workman the appointment of peon on 11-10-84, and confirmed him in the bank's service w.e.f. 11-4-85. Presently the workman is posted as peon at Prem Nagar Branch of the Bank at Kanpur.

4. The case of the Union is that the workman who is a Matriculate deserves to be appointed in clerical cadre in view of para 324 of the Sastry Award. The workman made a representation to the Chairman of the erstwhile Bank on 2-9-85, but the bank refused to consider his representation vide its letter dated 26-10-85. The Union alleges that by doing so the bank violated its own recruitment policy for sub staff cadre. In fact the appointment of a matriculate employee in subordinate cadre is also in violation of the Bipartite Settlement dated 19-10-66. As far as bank's recruitment policy sons and daughters who are matriculate in IIIrd Div. are to be appointed as Cashier-cum-Godown Keeper in Clerical Cadre. The Union, has therefore, prayed for determination of the amount of arrears due to difference in wages in the pay scale of subordinate cadre and clerical cadre from the date of workman's appointment i.e. 11-10-84 and also for his appointment as Cashier cum Godown Keeper.

5. The case is contested by the management. According to the management under the settlement dated 5-7-82 arrived at between bank and All India Hindustan Commercial Bank Employees Federation, for employment on compassionate grounds qualifications for appointment in various posts shall be the same as for general candidates except that the minimum educational qualification for appointment in subordinate cadre may be relaxed upto 5th Standard.

6. In fact the workman was not eligible for appointment on compassionate ground either in the clerical cadre or in the subordinate cadre as he did not meet the eligible criteria for appointment in the clerical cadre being simply a matriculate with IIIrd Division and in the subordinate cadre being over qualified. However, the management was magnanimous enough to give him appointment as peon cum waterman in the subordinate cadre keeping in view the distress condition of the family of the deceased employee. The management deny any violation of any of the terms of the Sastry award and Bipartite Settlement.

7. In support of its case the Union has examined the workman and in support of their case the management have examined Shri S. K. Barida an Officer of the Bank.

8. It is not a case of oral evidence. It is purely a case of argument. Both sides have relied upon the settlement dated 5-7-82 arrived at between the management and the All India HCB Employees Federation. After obtaining the copy of the said policy from Shri O. P. Mishra, the authorised representative for the Union, Shri S. K. Barida representative for the management filed it in the case.

9. Para 1.5 of the settlement lays down that in the event of a regular full time employee dying while in service of the bank the bank may at its discretion appoint on compassionate grounds without holding test one son or unmarried daughter of the employee for which he/she answers the bank's eligibility criteria, his widow for which she answers the bank

eligibility criteria subject to relaxation specified herein or a near relative such as brother or unmarried sister of the deceased employee nominated by the widow on whom she would be wholly dependant and who would give in writing that he/she would look after the family of the deceased employee. It is further provided that such appointment shall be restricted in workmen cadre. In the case of the widow of the deceased employee there will be no age limit but the minimum age limit and the upper age limit in other cases will be the same as for general candidates. It is then provided that the requirements of the educational qualifications for appointment in various posts shall be the same as for general candidates except that the minimum educational qualifications for appointment in subordinate cadre may be relaxed upto the 5th standard.

10. From the above it thus appears that the bank's eligibility criteria can be relaxed in the above manner only in the case of widow and no others.

11. Para (2) refers to criterion of eligibility to various cadres of workman staff. The minimum qualifications prescribed for the post of cashier cum godown keeper is Second Division Matriculation/Ind Div. Higher Secondary or Second Div. in any equivalent examination. For the post of sub-staff the educational qualification prescribed is VIII class pass, the candidate should not be matriculate.

12. This is the admitted position before me and it will also be evident from the photostat copy Ext. W-1 of the High School Certificate that the workman is a matriculate in III Division.

13. It has been argued by Sri Mishra the authorised representative for the Union that in view of the educational qualification prescribed for the post of sub-staff, the workman could not have been appointed in sub-staff. Since he was a matriculate may be in III Div. he should have been given the appointment as cashier cum godown keeper.

14. On the other hand, it has been argued by Shri Parida the authorised representative for the bank that since the minimum educational qualification for the post of cashier cum godown keeper is High School Second Division, the management of erstwhile Hindustan Commercial Bank Limited was not competent to appoint the workman as Cashier cum Godown Keeper. The bank management in fact went out way to help the workman and ignoring his educational qualification given him appointment in sub-staff. Therefore, the workman/Union cannot compel the management to appoint the workman as Cashier cum Godown Keeper from the date of his initial appointment.

15. After hearing the two sides and after going through the relevant paras of the settlement dated 5-7-82, I find no force in the submissions made by Shri O. P. Mishra, the authorised representative for the Union. The workman should thank his star for his appointment as sub-staff by the management of the bank. Being over qualified the bank could have refused the appointment to him even in sub-staff cadre. Moreover, the erstwhile HCB could not have been compelled to give appointment to him. From para 1.5 of the said settlement it is evident that appointment on compassionate ground is a matter simply in the discretion of the bank's management.

16. Hence, I find that if the bank did not appoint the workman Shri A. K. Mishra on the post of Cashier cum Godown Keeper, it did not commit any illegality. The action of the management was quite fair and justified.

17. Rerefence is answered accordingly.

ARJAN DEV, Presiding Officer
[No. L-12012/64/86-D.IV (A)]

का.प्रा. 2917 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कलकत्ता के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 24-10-91 को प्राप्त हुआ था।

S.O. 2917.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the Punjab National Bank and their workmen, which was received by the Central Government on 24-10-1991.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 55 of 1983

PARTIES:-

Employers in relation to the management of Punjab National Bank, Calcutta

AND

Their workmen.

PRESENT :

Mr. Justice Manash Nath Roy, Presiding Officer.

APPEARANCE :

On behalf of management—Mr. R. N. Majumder, Advocate.

On behalf of workmen—Mr. M. S. Dutta, Advocate.

STATE : West Bengal

INDUSTRY : Banking

AWARD

On receipt of the reference from the Government of India, Ministry of Labour and Rehabilitation (Department of Labour) vide Order No. L-12012/7/83-D.IV (A) dated October, 1983 to the effect "Whether the action of the Management of Hindustan Commercial Bank Limited, in relation to their Branch at 18, Netaji Subhas Road, Calcutta-700001, in withdrawing special allowance duties from Shri Nani Gopal Pal with effect from February 1, 1977 is justified? If not, to what relief is the concerned workman entitled?", usual notices were issued and in terms thereof, the pleadings were completed by the parties.

2. Before dealing with the case and pleadings, I think it should be kept on record that on or about 8th September, 1988, an application was filed by the Punjab National Bank Sramik Union, representing the cause of the workman concerned viz. Shri Nani Gopal Pal (hereinafter referred to as the said workman), praying for an order that the reference in question, in the facts and circumstances as mentioned in that application, be allowed to be continued between the Punjab National Bank and their workmen represented by the applicant Union. In the application, it was mentioned inter alia amongst others that during the pendency of the reference, Hindustan Commercial Bank the Bank mentioned in the Reference (hereinafter mentioned as the referred Bank), has merged with the said Bank and has lost their separate existence and are now regarded as part of the undertaking of the said Bank and has been carrying on business under the name and style of the Punjab National Bank and that all the employees of Hindustan Commercial Bank Ltd. have been absorbed in and have become employees of the said Bank and furthermore, at present the Hindustan Commercial Bank Employees' Organisation, the union named in the Reference has also merged with the applicant Union. In fact, similar representation requesting the substitution was also prayed for by the said Bank, by their representation dated 20th September 1988, in terms of the leave obtained on 16th September 1988.

3. It would further appear that on 21st September 1988, my predecessor in office, after hearing the parties, allowed the substitution as prayed for and it would not also appear that any objection was taken to such order.

4. I have narrated the above facts regarding substitution as Shri Majumder, at the time of his argument, for the first time took the plea that the substitution as allowed by the Tribunal was improper, illegal and without jurisdiction. Shri Dutta, on the facts, has stated that such exceptions to

the order, will no longer be available to the said Bank and that too in view of conduct and more particularly when such order was obtained by the said Bank on their asking. I agree with the submission of Shri Dutta and reject the submission of Shri Majumder.

5. The referred Bank initially filed the written statement 14th March 1984, wherein the activities of that Bank have been indicated and it has also been stated that pursuant to the rotational allotment policy of jobs, for the purpose of efficient running of the institution, usually members of the clerical staff are transferred and such transfer from department to department or the branches and the clearing house, which is under their control and supervision and that is the deputed staffs condition of service.

6. It has been stated that the said workman was appointed on 27th March 1973 as a clerk by the referred Bank in its main branch at Calcutta and he worked in rotation in different departments and/or Counters of the branch till 31st August 1975 and on 1st September 1975, he was temporarily deputed as a clerk in the Clearing House, as a representative of the referred Bank and he worked there till 31st January 1977 and the service rendered by him as such, was treated as work of ordinary clerk. It has also been stated that in fact before the said workman, many other employees, whose names have been mentioned in the written statement, were similarly deputed in the concerned Clearing House for the necessary clearing work.

7. It was the case of the referred Bank that the said workman filed an application under section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act), before the Central Government Labour Court at Calcutta, for computation of allowances which was claimed to be entitled by him for the period from 1st September, 1975 to 31st December 1976, for his working in the Clearing House and that application was dismissed as settled out of Court.

8. It was the case of the referred Bank that the said workman duly accepted the order of transfer and joined the concerned department and since he again felt aggrieved by such order of transfer from the Clearing House to the referred Bank's main branch and alleged that his posting in the Clearing House was permanent one, a dispute being Reference No. 25 of 1978 was referred for adjudication. It was also his claim that because of such posting, he was entitled to a Special Allowance and the concerned transfer deprived him of the said benefits. This dispute was however quashed on the ground that the Union espousing the same had no representative capacity.

9. It has been indicated that the self same dispute has again been referred to this Tribunal and such being the position, the referred Bank has raised a preliminary point regarding the maintainability of the same and has contended inter alia amongst others that (a) the present Reference is not maintainable in law inasmuch as there is no valid industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act, 1947; (b) In view of the fact that Shri Nani Gopal Pal is not a workman within the meaning of section 2(s) of the Industrial Disputes Act, inasmuch as Shri Pal received salary on 1-7-75 Rs. 530.40 on 30-6-78 Rs. 650.80 and on 29-2-84 Rs. 1,491.29, the present Reference is liable to be rejected; (c) in the facts and circumstances as stated the present Reference is barred by the principles of res-judicata; (d) on the facts stated hereinabove the principles of waiver, estoppel and acquittance are but to the maintainability of the instance Reference and (e) the reference is liable to be quashed inasmuch as the Union, namely, Hindustan Commercial Bank Employees' Organisation does not have the requisite representative capacity to espouse the instance Reference inasmuch as out of 77 workmen employees in the said Main Branch only 14 workmen employees are the members of the said Organisation.

10. The referred Bank has alleged that since the Special Allowance is attached to the post of Special Assistant, who is senior and experienced clerk of the Bank and the said workman was not a Special Assistant at any point of time, the question of allotting duties of a Special Assistant which will entitle him Special Allowance, does not arise. It was

also alleged that in withdrawing the Special Allowance in this case the referred Bank has acted in terms of the observations of the Hon'ble Supreme Court of India in Central Bank of India vs. Shri S. K. Saaw, 1976 (1) LLJ 90 and such withdrawal is also consonant to and in conformity with Circular No. IBA/CLC/1/77 dated 23rd September 1977 and other Circulars as mentioned in paragraph 12 of the written statement.

11. It was also the contention of the referred Bank that such permanent posting as claimed by the said workman only be claimed by senior and experienced clerks, who are eligible to be Special Assistant and his contentions are not maintainable either in law or on the basis of the policy followed by the referred Bank and the claim of other senior Clearing House clerks for posting in that post in preference to the said workman cannot be overruled. It has also been stated that the said workman's appointment in the instant case was made subject to transfer and transferring him by the referred Bank to any place, the authorities thought fit and therefore, transferring him from the Clearing House to Bank's Main Branch with effect from 1st February, 1977, was absolutely justified and bonafide. It has also been stated that similar transfer orders were passed and were given effect to in case of employees, who were placed in that post earlier than the said workman. In any event, it has been stated that the said workman cannot claim arrears or special allowance from 1st February 1977 till date, as during this period, he was neither working at the Clearing House nor he was a Special Assistant at that time.

12. In view of the above, it was claimed that the withdrawal of the said workman from the Special Assistant's duties in the Clearing House, since he was not a Special Assistant eligible to Special Allowance and he was a mere clerk, was justified.

13. In his written statement, which was filed on 25th April 1984, the said workman raised contentions contrary to the statements of the referred Bank as indicated earlier and it was his specific case that he was allotted the duties of Clearing House representative by the referred Bank at Reserve Bank of India, on regular assignment from 1st September 1985 and such duties of the Clearing House, attracted a Special Allowance of Rs. 91 for month along with the usual dearness allowance by virtue of paragraph 5.2 and 5.6 of the bipartite settlement dated 19th September 1976 and as such, he would be entitled to claim necessary re-imbursement of the said allowance. Paragraph 5.2 of Chapter 5 deals with Special Allowances and it may be the case of the said workman that he would come under clause (XIX) which deals with Special Assistant and paragraph 5.6 lays down that such Special Allowance as prescribed, are intended to compensate a workman for performance or discharge of certain additional duty and functions acquiring greater skill or responsibility over and above the routine duty and function of the workmen. The said paragraph has also laid down the necessary requisites for entitlement of such special allowance.

14. The said referred Bank has stated, since the management did not consider his claim favourably, on or about 12th January 1977, the said workman filed an application U/S 33-C(2) of the said Act before the Central Government Labour Court, for realising allowances from the management and after contest, they finally paid him the total outstanding Special Allowance from 1973 to January 1977.

15. It was the case of the said workman that his transfer from Clearing House to the Bank on 1st February 1977, was intended to deprive him of the benefits of Special Allowance during the pendency of the dispute before the Labour Court and as such, the same was in clear violation of the said Act.

16. The said workman has claimed to have been protected against such transfer and has also admitted his posting at the Clearing House with full benefits and has also contended that such transfer was in fact a reversion and the same was illegal, inoperative and void. It was also his claim that in acting in the manner as they did, the management acted illegally, arbitrarily and without any justification and they really changed the terms and conditions of the service of the said workman by withdrawing him from the

Clearing House from 1st February 1977 and consequently, depriving him of the compensatory allowance, which he was drawing by virtue of his regular posting at the Clearing House, as representative of the referred Bank for a long continuous period from 1st September 1975 to 31st January 1977 and such action was also bad, as necessary change of condition of service was not made with any notice, which is required under section 9-A read with the Fourth Schedule of the said Act.

17. It was the case of the said workman that the management failed to consider his just and due demands and as such, the present dispute was raised. It was his further case that he was not posted in the manner in absence of any other permanent representative of the Clearing House and in effecting his withdrawal in the instant case, the authorities have acted in clear violation of the bipartite settlement or the said Act. It was also his allegation that his transfer was a motivated and mala fide one and intended to deprive him of the Special Allowance. It was further claimed that because of his long posting at the Clearing House, he ought to have been designated as Special Assistant cum Clerk and his transfer in the manner as was done, resulted a loss of wages to him which extended upto Rs. 300 per month with effect from 1st February 1977. He claimed further that he was posted in the Clearing House, he ought to have been designated as Special Assistant and he should have been performing such duties regularly on permanent assignment basis. He has further claimed that the circulars referred to above and by the Management, will not envisage taking away the Special Allowance duties from him, when he was paid such allowance in terms of the Labour Court's decision. He has also stated that the earlier Reference was rejected on technical grounds viz, on the ground of insufficient representation and such defect has been cured by the present Reference.

18. In view of the above, it has been claimed that the action of the management should be declared illegal and unjustified and they should be directed to re-allocate the duties of Special Assistant to the said workman at the Clearing House and also to re-imburse him the loss as sustained due to the concerned mala fide transfer.

19. There was a rejoinder filed by the said referred Bank against the aforesaid statement filed on behalf of the workman, wherein material allegations have been denied and such rejoinder was also followed by another rejoinder filed on behalf of the management on 15th November 1984, whereby, in fact, it was prayed that no order should be passed in favour of the said workman and his claim should be refused. In this rejoinder, further statements were incorporated denying, disputing and refuting the statements of the said workman.

20. The parties to the dispute lead their evidence both oral and documentary in support of the respective cases and submissions were put forward on those basis.

21. Shri Dutta appearing for the said workman, after referring to the pleadings and evidence, indicated that from 1975 till 31st January, 1977 the said workman performed his special duties to the post in the Clearing House, after being duly posted there by the relevant office order and such assignment was permanent one and so the Bipartite Settlement as mentioned earlier was applicable in this case. But, suddenly such benefit from the said workman was withdrawn with effect from 1st February 1977 and such withdrawal of the necessary benefits was given effect to without assigning any reason, opportunity and without any notice under section 9-A of the said Act, which is a bar to the change of condition of service applicable to any workman in respect of any matter specified in the Fourth Schedule of the said Act, without complying with or following sub-clauses (a) and (b) thereunder and as such, the action as taken, was vitiated, the more so when, the case under consideration will not come within the exceptions as mentioned in the said section.

21. To establish the case or to supplement his submission, Shri Dutta referred to that part of the written statement of the said workman, where he has contended that his transfer from the Clearing House to his previous post in the Current Account section as a Clerk was in fact and effect a reversion and such action was illegal, inopera-

tive and not in consonance with the settled law. In withdrawing the said workman in the manner the same was done, the Bank acted illegally, arbitrarily and in an unjustified manner, and because of such action, the said workman was deprived of his compensatory allowance, which he was earning regularly and for a long uninterrupted period and the authorities of the Bank acted contrary to the provisions of the settlement dated 19th October 1966 viz. the Bipartite Settlement. It was also contended that such act was motivated and mala fide. Shri Dutta further contended that since Management's witness had no personal knowledge and in fact, he could not have such knowledge as he admittedly joined after a long lapse of time from the cause of action and more particularly in 1989, so any evidence sought to be produced or relied on by him should be discarded. It is true that the witness joined after the cause of action, but it is very difficult to agree with the suggestions of Shri Dutta, since such case was not put forward to MW-1. It should also be noted that even though Shri Dutta, in support of his submissions relied on Chapter-V of the Bipartite Settlement and more particularly to Clause (XIV) and paragraphs 5.8 and 5.9, the pleading of the said workman on the joined was not specific and in fact Bipartite Settlement or any part of portion thereof has not at all been pleaded.

22. On the effect of the withdrawal of the said workman from the Clearing House and if the same was violative of section 3-A and Fourth Schedule of the said Act and if such action violated the conditions of service of the said workman or his terms of employment, reference was made to the case of Indian Oil Corporation Ltd. vs. Its workmen, 1975(2) LLJ 319. In that case, the management of Assam Oil Refineries, Gauhati took an independent and voluntary decision to grant all its employees, Assam Compensatory allowance on the basis of a Central Government Circular, employees posted in Assam, although the said circular was not binding on the Management. Thereafter, with the gradual evaluation of time and because of subsequent notifications, it was directed that the employees of the Central Government would have to draw either compensatory allowance at the existing rate or the House Rent Allowance, but not both. The Company thought that the circulars were binding on them, therefore, they of their own, without giving a notice to the workers withdrew the concession of the compensatory allowance which was granted earlier and such concession was withdrawn with effect from 1960. The Government was moved for making a Reference to the Tribunal, because the dispute arose between the parties regarding the competence of the management to withdraw the concession as granted contending inter alia amongst others (i) that the grant of Assam Compensatory allowance was an implied condition of service; (ii) that by withdrawal of such allowance, the Management sought to effect a substantial loss which adversely and mainly affected the service conditions of the workman and as such, Section 9-A of the said Act was applicable and as Section 9-A was not complied with, the withdrawal of the compensatory allowance was clearly illegal. It has also been indicated that compensatory allowance and housing subsidy are two different and separate category of the terms of service condition and neither they can be clubbed together nor the one be made dependent on the other. On the basis of the determination as mentioned in the case under reference and also on a reference to the observations in the case of Life Insurance Corporation vs. D. J. Bhahadur and others 1981 (1) LLJ 1. Shri Dutta contended that since there was no dispute that the terms of service and conditions of employment of the said workman was changed unilaterally, so there was admitted violation of section 9-A of the said Act and as such, the action as taken should be deemed to be void, illegal, bad and inoperative.

23. Apart from the cases as mentioned earlier, Shri Dutta referred to case of KCP Employees' Association Madras vs. Management of K.C.P. Ltd. and other, 1978 (1) LLJ 322 in support of his submissions that even in case of any dispute, the benefit of doubt should be given to the weaker section meaning thereby, the said workman in this case.

24. Shri Mazumdar, appearing for the Bank after placing the pleadings and evidence submitted that the said workman was given the benefits of Special Allowance for his Special posting in the Clearing House and when such

Special Allowance was withdrawn because of his withdrawal from Special posting, so the said workman cannot claim to have any right to have any of his rights infringed. He indicated that such special posting was given to said workman by the referred Bank. He also referred to and relied on the Bipartite Settlement of 19th October, 1966 and more particularly to Chapter-V, which deals with Special Allowance. It was his contention that the said workman was really a clerk appointed by the Bank, but he was drawing the additional benefits for the purpose of the additional duty performed by him for his posting as a Special Assistant in the Clearing House. It was his contention that the said workman was designated as Special Assistant and was receiving special allowance for such special posting and as soon as he was duly withdrawn from such special posting, he became disentitled to the special allowance, which was linked up to his posting as Special Assistant.

25. Shri Mazumdar referred to paragraphs 5.4, 5.5 5.6, 5.7, 5.8 and 5.9 of the Bipartite Settlement and submitted that under paragraph 5.6, the said workman was duly allotted additional duty under paragraphs 5.8 and 5.9 and he was entitled to be paid the special allowance so long he was discharging the duties of Special Assistant and when he became a clerk, which was his original posting, he would not be entitled to maintain his claim for payment of special allowance. In fact, it was pointed out by him that even in his examination in chief the said workman has not made any definite and categorical statement regarding his designation.

26. It was Shri Mazumdar's further submission that in view of the Bipartite Settlement, Section 9-A of the said Act had no application and it should be noted that there was no proper pleading on the Bipartite Settlement by the said workman. Here it must also be noted that the order dated 31st August 1975 was not produced even though there was such direction given on 10th April 1990. But, since the facts as recorded are not in dispute, I think that non-production of that record, even though directed, was improper act on the part of the said Bank.

27. Then Shri Mazumdar referred to the written statement of the said workman and indicated that there were in fact difference in evidence and pleadings and there can not be any doubt that any violation of the Bipartite Settlement has not been pleaded. In that view of the matter, I agree with the submissions of Shri Mazumdar that the said workman cannot go beyond his pleadings. I find further that Section 9-A of the said Act will not apply in the case of violation of the Bipartite Settlement and that being the position, the said Bank, in my view can succeed.

28. Apart from the above, Shri Mazumdar referred to another award made in Reference No. 23 of 1978, Ext. M-1 and I find with agreement with Shri Mazumdar that since no change in conditions of service has been pleaded, on the basis of that exhibit, the said workman cannot also succeed, more particularly when, it would appear that in the said Award also the workman contended that he should have been designated as Special Assistant. Shri Mazumdar contended further that since even at the stage of that award the said workman claimed to be a Special Assistant, so he cannot now claim that he was a Special Assistant.

29. Shri Mazumdar further pointed out, the decision in the case of Management of Indian Oil Corporation vs. Their workmen and claimed that the same will not apply in the facts of this case and the same is distinguishable. He also claimed in the facts of this case that observations in that case will not apply with all force since in this case, there has admittedly been no change in conditions of service of the said workman. Submissions of Shri Mazumdar in my view are of substance.

30. Lastly, it was submitted by Shri Mazumdar that if submissions of the said workman as made in this case are allowed and accepted, then that would create an anomalous and abnormal situation with regard to payment of special allowance, when employees denuded for such special job are appropriately withdrawn from such job and on such withdrawal, the employee concerned will lose his character as Special Assistant. Such anomaly, I think, in agreement with Shri Mazumdar, should be tried to be avoided.

31. In view of the recordings and findings as above, I think and hold that the said workman cannot succeed and the Reference cannot be answered in his favour and the same should be rejected.

This is my Award.

Dated, Calcutta,

The 7th October, 1991.

MANASH NATH ROY, Presiding Officer
[No. L-12012/7/83-D.IV (A)]

नई दिल्ली 30 अक्टूबर, 1991

का.प्रा. 2918:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिण्डिकेट बैंक के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 29-10-91 को प्राप्त हुआ था।

New Delhi, the 30th October, 1991

S.O. 2918.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi, as shown in the Annexure in the Industrial dispute between the employers in relation to the Syndicate Bank and their workmen, which was received by the Central Government on the 29th October, 1991.

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 89/89

In the matter of dispute between:

Shri Shiv Parshad through
Upadhyaksh, Syndicate Bank Staff Association,
Ram Naresh Bhawan, Tilak Gali, Paharganj,
New Delhi-110055.

Versus

Chief Manager,
Syndicate Bank,
Pusa Campus Shaka,
New Delhi-110008.

APPEARANCES:

None—for the workman.

Shri K. Laxmi Narayan—for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12011/32/89-D.2(A) dated nil has referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Syndicate Bank, Pusa Campus, New Delhi in withdrawing the cash duties allowance from Shri Shiv Parshad w.e.f. 22nd December, 1988 was justified? If not, to what relief is the workman entitled?"

2. In this industrial dispute the management examined Shri K. G. Godiyar who was cross-examined at length by the workman representative. The workman did not appear on 12th August, 1991 nor did he appear on 16th September, 1991. It appears that the workman was not interested in further proceedings with this case. There is no reason to disbelieve the statement made by the management made on oath and from the non-appearance of the workman it appears that he is not interested in following the case further. I, therefore, give No dispute award in this case leaving the parties to bear their own costs.

GANPATI SHARMA, Presiding Officer
[No. L-12011/32/89-D.II(A)]

September 16, 1991.

का.प्रा. 2919:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कॉर्पोरेशन बैंक के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-10-91 को प्राप्त हुआ था।

S.O. 2919.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Corporation Bank and their workmen, which was received by the Central Government on the 28th October, 1991.

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 94/90

In the matter of dispute between:

Shri Ghisu Singh through Zonal Secretary,
Corporation Bank Employees Union,
1907/1901A-Chandni Chowk, Delhi-6.

Versus

Regional Manager,
Corporation Bank,
16/10, Main Arya Samaj Road,
Karol Bagh,
New Delhi.

APPEARANCES:

Shri S. C. S. Negi—for the Union.

Shri Ajant Kumar—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/140/90-IRBII dated 9th August, 1990 has referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Corporation Bank, New Delhi in transferring Shri Ghisu Singh, Armed Guard from New Delhi to Ghaziabad is justified? If not, to what relief is the workman entitled?"

2. The representative for the parties were present today when the parties settled the dispute amongst themselves. In view of the settlement it was stated by the representative for the workman that since the matter has been settled between the union and the management and all disputes have been settled and no dispute award may be given. This was also signed by the management representative. In view of the above settlement No Dispute Award is given in this case leaving the parties to bear their own costs.

GANPATI SHARMA, Presiding Officer
[No. L-12012/140/90-IR(B-II)]

का.प्रा. 2920:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनिट बैंक प्राक इंडिया के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, रोहताड़ी के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-10-91 को प्राप्त हुआ था।

S.O. 2920.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal,

Guwahati as shown in the Annexure in the industrial dispute between the employers in relation to the Management of Union Bank of India and their workmen, which was received by the Central Government on 28-10-1991.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL, GUWAHATI ASSAM

Reference No. 10(c) of 1989

PRESENT :

Shri D. N. Hazarika, Presiding Officer, Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute :

BETWEEN

The management of Union Bank of India, Guwahati Branch, Assam.

AND

Their workmen represent by General Secretary, Union Bank Employees' Union (N.E.R.) H.Q. C/o Union Bank of India, Fancy Bazar, Guwahati-I

AWARD

This reference arising out of the Central Government Notification No. L-12011/40/89 dated the 19th September, relates to the dispute indicated in the Schedule below :

"Whether the action of the management of Union Bank of India in not allowing Shri Babul Das to officiate as Asstt. Head Cashier for the period 2-2-88 to 25-2-88 is justified? If not, to what relief is the workman entitled?"

On receipt of the Notification the Reference was registered and notices were issued to the parties to file their written statements. Timely parties filed their written statement. In course of hearing management examined one witness and the workman examined himself only. Another witness was also examined as court witness.

Management case inter-alia is that their workman Sri Babul Das did not give any option to work as Head Cashier in the leave vacancy as per promotion policy circulated vide staff circular 2806 dated 14-5-85. The then acting Branch Manager allowed to P. Chakraborty to officiate in the said leave vacancy that is from 2-2-88 to 25-2-88. Sri P. Chakraborty served as Asstt. Head Cashier during this period and accordingly officiating allowance was paid to him by management. Babul Das has no right to claim any special allowance as Asstt. Head Cashier for this period as he did not work as Asstt. Head Cashier for the period from 2-2-88 to 25-2-88. Case of the workman is that Sri Babul Das is senior most Asstt.-cum-clerk in the Union Bank of India, Fancy Bazar Branch. One Sri Sosodhar Das who served as Asstt. Head Cashier of the Bank went on leave from 2-2-88 to 25-2-88. As per promotion policy workman Babul Das being the senior most assistant was to be allowed to officiate as Asstt. Head Cashier for the period from 2-2-88 to 25-2-88 after obtaining his option for that purpose. The then acting Branch Manager did not act as per promotion policy. He did not obtain any option in writing verbally from the senior most clerk of the Bank. Acting Branch Manager allowed illegally P. Chakraborty to officiate as Asstt. Head Cashier during the above noted period. On his protest the then Branch Manager agreed to pay the allowances of Asstt. Head Cashier as admissible for that period to Babul Das. But on 3-3-88 Babul Das came to know that officiating allowance was paid to P. Chakraborty and thereby he was deprived of his legitimate case.

In support of their respective cases management examined one witness and exhibited some documents. Workman Babul Das examined himself and exhibited some documents.

Witness Jagonath Chakraborty was examined as Court witness after hearing both sides.

Learned Counsel for the management argued that Babul Das did not opt for officiating as Asstt. Head Cashier for 2968 GI/91-5

the period i.e. from 2-2-88 to 25-2-88. As Babul Das did not give option to officiate the then acting Branch Manager allowed Sri P. Chakraborty next senior most clerk of the Bank to officiate as Asstt. Head Cashier.

According to him as Babul Das has failed to give his option to officiate, management has no other alternative then to allow next senior most clerk to officiate as Asstt. Head Cashier for the relevant period

Counsel for the workman argued that the then acting Branch Manager did not call for any option either verbally or in writing from Sri Babul Das knowingly that Sri Babul Das is the senior most clerk of the Bank.

According to him acting Branch Manager Sri Sukla allowed P. Chakraborty to officiate as Asstt. Head Cashier under pressure of the other union of the Bank. He further argued action of the acting Branch Manager allowing P. Chakraborty to officiate as Asstt. Head Cashier is against the principle laid down in management's promotion policy which is circulated as per staff circular No. 2806 dated 14-5-1985.

Management witness Gonesh Sukla in his evidence admitted that he did not obtain any option either in writing or verbally from Babul Das on 2-2-88. He further admitted in his evidence that he does not remember why he allowed P. Chakraborty to officiate as Asstt. Head Cashier on 2-2-1988.

Management witness Sri Sukla again admitted in his cross examination that he does not remember whether he allowed P. Chakraborty to officiate as Asstt. Head Cashier after obtain verbal option. From his evidence it is clear that acting Manager did not call for any option in writing either from Babul Das or P. Chakraborty on 2-2-88.

Regarding verbal option witness Sukla did not throw any light in his evidence. Workman in his evidence stated that acting Branch Manager did not call for any option verbally from him on 2-2-88. This witness further stated that he is the senior most clerk of the said Bank. As per promotion policy it is his right to officiate in such leave vacancies. Management in their written statement para 17 admitted that it is the duty of the management to obtain willingness to officiate in writing from among the clerical staff to their respective Branch Manager. When any occasion for such temporary posts occurs management will not act as per willingness on simple seniority basis. Promotion policy of the Bank is clear on this point i.e. who is eligible to officiate as Asstt. Head Cashier during leave vacancies.

It is the duty of the Branch Manager to obtain in writing from clerks and allowed senior most to officiate in leave vacancies as and when necessary arises. In the instant case I find management did not obtain any option in writing from the senior most clerk of the Bank and also from P. Chakraborty who officiate as Asstt. Head Cashier during the period from 2-2-88 to 25-2-88.

Therefore I find management did not follow the procedure as laid down in promotion policy. Witness Sukla admitted in his evidence, that he does not remember whether he obtained any verbal option either from B. Das or P. Chakraborty. Babul Das in his evidence stated that then acting Branch Manager did not call for any verbal option and allowed P. Chakraborty to officiate as Asstt. Head Cashier under pressure from members of a different union of the Bank.

Counsel for management admitted about existence of two different union in the bank. I find workman by cogent evidence established that then acting Branch Manager did not call for any verbal option from Babul Das who is the senior most clerk of the Branch. Further from evidence on record I find then acting Branch Manager allowed P. Chakraborty to officiate under pressure from members of the other union.

Hence I find management was not justified in not allowing Babul Das to officiate as Asstt. Head Cashier for the period from 2-2-88 to 25-2-88 in their Fancy Bazar Branch.

Workman claim officiating allowance for the period 2-2-88 to 25-2-88. His contention is that the then acting Branch Manager agreed to pay allowance for that period though P. Chakraborty was officiating as Asstt. Head Cashier.

It is a settled law that if a person is not working or absent from duty without leave is not entitled to any pay or remuneration for that period. In the instant case workman admitted that he did not officiate as Asstt. Head Cashier from 2-2-88 to 25-2-88. Therefore his claim for officiating allowance for that period is against the provision of law. It is his case that the then acting Branch Manager verbally agreed to pay officiating allowance for that period to him though P. Chakraborty was officiating Asstt. Head Cashier for that period.

According to him one Sri Jagonath Chakraborty who is the Secretary of their union was present when Sri Sukla (acting Branch Manager) agreed to pay officiating allowance for the relevant period. Jagonath Chakraborty in his evidence admitted that he was not present when the then acting Branch Manager verbally agreed to pay officiating allowance to Babul Das. In his evidence he stated that then acting Branch Manager Sukla agreed to pay officiating allowance to Babul Das though P. Chakraborty was officiating as Asstt. Head Cashier.

In absence of any cogent evidence on record I find contention of the workman that the acting Branch Manager Sri Sukla agreed to pay officiating allowance to him for relevant period though P. Chakraborty was serving as Asstt. Head Cashier does not hold good. As per the settled law workman Babul Das is not entitled to any officiating allowance for the relevant period as he did not officiate as Asstt. Head Cashier.

In view of my above discussion I find management is not justified in not allowing Babul Das to officiate as Asstt. Head Cashier for that period i.e. from 2-2-88 to 25-2-88. Management should strictly follow the principle laid down in their promotion policy in future.

Further I find Babul Das is not entitled to relief i.e. officiating allowance of Asstt. Head Cashier for the period from 2-2-88 to 25-2-88.

I give this Award on this 11th day of October, 1991 at Guwahati under my hand and seal.

D. N. HAZARIKA, Presiding Officer
[No. L-12011/40/89 D.II (A)]

का.प्र. 2921:—औद्योगिक विवाद अधिनियम, 1947 (1974 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्र बैंक के प्रबन्धन के संघर्ष नियोज्जक और उनके कर्मचारों के बीच, अनुबंध में निर्विष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-10-91 को प्राप्त हुआ था।

S.O. 2921.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Management of Canara Bank and their workmen, which was received by the Central Government on the 28-10-91.

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

I.D. 66/87

Dharam Pal Vs. Canara Bank

For the workman—Shri Mangat Sharma.

For the management—Shri P. Amritraj.

AWARD

Central Government vide Gazette notification No. L-12012/549/86-D.II(A) dated 18th August, 1987 issued U/s

10(1)(d) of the I.D. Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the Canara Bank in terminating the services of Shri Dharam Pal, son of Shri Hari Chand on daily wage basis in subordinate cadre at their Ambala Cantt. branch w.e.f. 3-12-85 is justified? If not, to what relief the concerned workman is entitled?"

2. The claim set out in the claim statement is that workman was appointed in the bank on 4-12-84 as a peon against a permanent vacancy although he was treated as temporary employee by the management and his name was sponsored through employment exchange. He was interviewed on 3-12-84 and appointed on 4-12-84 of the reserved category and thereafter he performed the duties of peon to the satisfaction of the management and the local management had been recommending the case of the workman to higher authorities for absorbing him permanently. However on 3-12-85 his services were retrenched without giving him any notice or pay in lieu thereof although he had fulfilled the condition of continuous service and remained in service without any break. It was further alleged that he had made representation on 5-1-86 for his illegal termination for which no response was received. It was further alleged that management had violated the Sastri Award as well as Section 25-F and H of the I.D. Act. It was further alleged that Supreme Court had directed the respondent management to have preference for absorption and when vacancies were arise. To such daily wage employees who has completed 240 days. It was prayed that he be reinstated with full back wages and seniority of continuous service and other consequential benefits arising therefrom.

3. The respondent management contested the case and the contents of the allegations contained in the claim were denied and the plea was taken that a number of unauthorised persons were engaged by the Branch Manager contrary to the specific instructions and Dharam Pal was one of such person who was engaged unauthorisedly. He was directed to report for duty for number of times but he did not report. It was admitted in the written statement that the workman continued from 1-12-84 to 2-12-85. The bank had offer to pay ad-hoc amount equivalent retrenchment compensation however the same was rejected by the workman and this was done at the time of conciliation proceedings before the conciliation officer on 22-10-86 it was further pleaded that the petitioner was only a daily wage earner therefore, he has no right to get the benefit of the order of the Hon'ble Supreme Court in Sajjan Singh Vs. Union of India as the petitioner was not engaged on any sanctioned vacancy and prayed for the dismissal of the reference.

4. Replication was also filed reiterating the claim made in the claim statement.

5. In support of his case petitioner produced himself as WW1 and filed affidavit Ex. W1 in evidence and W2 representation made on 5-1-86 and W-3 another representation. W4 claim for the A.L.C. W5 rejoinder before the A.L.C., W6 letter dated 26-9-86, W7 letter dated 6-6-85, W8 letter dated 18-6-85, Ex. W9 letter dated 22-11-85, W10 letter dated 17-10-85, W11 letter dated 30-10-85 and W12 letter dated 18-12-85. Management produced Shri C. Ravindran officer of the Canara Bank who produced himself as MW-1 and filed his affidavit Ex. M1 in evidence. In cross-examination he has admitted that as per Ex. M2 (Daily wage paid register) workman had work for 321 days from 6-12-84 to 2-12-85 and the work and conduct of the workman was satisfactory and close his case.

6. I have heard both the parties and gone through the evidence and record on the file. Representative appearing on behalf of the workman has argued that the petitioner has completed 240 days in one year and there is no compilation of Section 25-F of the I. D. Act for non payment of retrenchment compensation and one month salary in lieu of notice. This position has not been contradicted by the respondent management. Mr. C. Ravindran appearing on behalf of the management in cross-examination has admitted 2-12-85 and also filed Ex. M2 daily wage register showing that the petitioner has work for 321 days from 6-12-84 to

the number of days put in by the petitioner as stated by the witness. Not only this respondent management had been recommending his case for permanent absorption of the petitioner to the higher authorities as apparent from the documents Ex. W7 to W10. Therefore, admittedly the petitioner had in fact served for more than 240 days during the 12 months of service preceeding the date of termination and the mandatory provisions of Section 25F has not been complied with at the time of termination of the petitioner. The termination is per se in violation of law. It has been contended by the representative of the management that the retrenchment compensation was offered to the petitioner in conciliation proceeding but the same was denied by the workman has also no help to the management because the same indicated that at the time of termination of services of the workman no compensation was offered to him.

The mere readiness to pay compensation at the later stage does not condone the violation of Section 25-F when the retrenchment compensation was offered at the time of retrenchment.

7. Therefore, in view of the discussion made in the earlier paras the termination of the present workman is set aside and he be reinstated with all the benefits of continuity of service. However so far back wages are concerned, Mr. Dharam Pal the workman as made a statement that he restrict his claim for back wages only from the date of reference i.e. 18-8-87. Therefore, back wages are only allowed from 18-8-87 i.e. the date of reference. Reference is answered accordingly

Chandigarh,

Dated: 9-9-91

ARVIND KUMAR, Presiding Officer
[No. L-12012/549/85-D.II(A)]

का.प्र. 2922.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार औद्योगिक बैंक आफ कामर्स के प्रबन्धनत्व के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधीकरण, वण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 28-10-91 को प्राप्त हुआ था।

S.O. 2922.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the annexure in the industrial dispute between the employers in relation to the management of Oriental Bank of Commerce and their workmen, which was received by the Central Government on the 28th October, 1991.

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH

Case No. ID No. 23 of 1988

Raj Pal Singh

Vs.

Oriental Bank of Commerce;
For the workman—Shri S. K. Patni.
For the management—Shri Jagat Arora.

AWARD

Central Government vide gazette notification No. L-12012/803/87-D.II(A) dated 26th April, 1988 issued U/s. 10(1)(d) of the Act, 1947 referred the following dispute to this Tribunal for adjudication:—

“Whether the action of the management of Oriental Bank of Commerce in relation to their Faridabad Branch in terminating the services of Sri Rajpal Singh with effect from 6th August, 1986 is justified? If not, to what relief is the workman entitled?”

2. Case of the workman as set out in the claim statement is that he had joined NIT Faridabad branch of the respondent Bank on 12th December, 1985 and was deemed to be confirmed in the Bank's service in terms of para 495 of Sastri Award. It was further alleged that he is handicapped person in the Bank. In disregard of the rules/award the respondent extended his probation period vide letter dated 12th June, 1986 and this letter was of dated after he has completed his period of probation of six months. He was deemed to have been confirmed in bank's service in terms of para 495 of Sastri Award. It is further alleged that on 6th August, 1986 the regional manager terminated his services without advising any reason for the drastic action against all rules and regulations of Sastri Award governing his service conditions. It was alleged that action of the management, against all rules and norms is violation of Sastri Award and law of the natural justice and no opportunity was given to him before taking this action. It was further alleged that the action of the Respondent Bank after he had duly completed his probationary period and was deemed to have confirmed in the bank's service is against law and not maintainable. It was prayed that he be reinstated in service with full back wages.

3. Reference was contested by the management and written statement was filed, in which it was contended that the provisions of Sastri Award in para 495 were further modified by Desai Award wherein it was provided that the probation period can be extended by a further period of three months without obtaining consent of the workman and in the present case it was found that the applicant did not possess the requisite qualifications so he was not eligible for the employment in the Bank. Services of the petitioner were terminated in terms of Clause 3 of the appointment letter dated 5th December, 1985 which contains that the probation period for a period of six months or for a longer period and after the probation period bank may in its entire discretion confirm him in the post provided his work and conduct found satisfactory. It was also contained in the appointment letter that during the probation period his services are liable to be terminated at any time if the work and conduct were not found satisfactory or for any other reason whatsoever without assigning any reason. Further stand was taken that minimum qualification for this post was 8th pass. However petitioner mentioned in his affidavit as 8th pass and later on it was tempered with 'under middle'. Further stand was taken that letter extending probation period was issued to the applicant being 8th, 9th and 11th June were bank holidays and on 10th of June petitioner was not present on duty, therefore, the letter was given to the petitioner on 12th June, 1986 before the start of his duty or marking his attendance which he accepted without protest. It was denied that the extension of the probation period was in disregard of the rules or provisions of the Award. Bank further taken the stand that the termination letter was in accordance with the terms and conditions of the service applicable to him and in accordance with the contract of employment and being simple termination of service under the contract of employment of the probationer it is fully justified. It was further contended that the petitioner was not possessing the minimum qualification and was not eligible to get the employment in the bank and prayed for the dismissal of the reference.

4. Replication was also filed reiterating the claim made in the claim statement.

5. Petitioner in support of his case filed his affidavit Ex. W1 and produced himself as WW1 in which he stressed the same facts contained in the claim statement. In cross-examination he has admitted that he is middle fail and he has admitted that in his application Ex. M1 he did not mention the word 'failed' in the relevant column of the academic qualification. He has admitted that in his application originally it was typed under matric '8th pass' and however thereafter it was written 'under middle' in the said affidavit and it was clarified by him that the branch manager had asked him to make amendments in the affidavit at the time when he submitted the same.

The management produced Shri Som Raj Gupta senior manager of O.B.C. who tendered his affidavit Ex. M6 and produced himself as MW1 and relied on the documents Ex. M1 the application form filled by the applicant, Ex. M2 the

affidavit filed by the workman at the time of employment, Ex. M3 letter dated 12th June, 1986 extending probation period and Ex. M4 termination order, Ex. M5 appointment letter. In his affidavit he has stated that minimum qualification for the post was 8th pass. He also stated that name of Raj Pal Singh was sponsored through employment exchange and he submitted application Ex. M1 and affidavit Ex. M2 showing himself as 8th pass. He also deposed in his affidavit that he deliberately suppressed the material fact about his qualification. He also stated that the petitioner was absent from duty on 10th of June, 1986 and 8th, 9th and 11th June, 1986 were bank holidays and letter extending his probation period was given to him on 12th June, 1986. He also deposed that he had never asked the petitioner to change or amend his affidavit Ex. M2. In his cross-examination he has stated that he verbally conveyed the petitioner about his deficiency in his work and about his late coming. He also admitted that on the expiry of the probation period the bank can extend the period before the expiry of the probation period. The management also produced Shri D. C. Aggarwal who tendered his affidavit Ex. M7 and produced himself as MW2. He has deposed that he never asked the petitioner to change or amend his affidavit at any time.

6. Both parties have filed written arguments. The same has been gone through by me and both parties adduced oral arguments as well.

7. In support of his case the representative of the petitioner has referred para 495 of the Sastri Award as well 21:18 of the Desai Award and strongly contended that the first probation period of the workman had completed on 11th June, 1986 and till then his probation period was not extended. In the circumstances the petitioner was deemed to have confirmed in the service of the bank on completion of probation by 11th June, 1986 and his probation period was extended on 12th June, 1986 one day late to his completion of his earlier probation period and thus the petitioner should be deemed to have confirmed in the service of the bank. The contention is devoid of any force for variety of reasons. Firstly as apparent from the evidence of Shri S. R. Gupta in his affidavit Ex. M6 it is clear that 8th, 9th, 11th June, 1986 were Bank holidays and the petitioner remained absent on 10th of June, 1986, therefore, 12th June, 1986 was the earliest working day available to the bank being 11th June, 1986 was the holiday to have served the petitioner a letter extending the probation period and that too at the start of the day before the petitioner could mark the attendance and the same was duly accepted by the petitioner without any protest. Therefore, contention raised that the petitioner had automatically confirmed by the 11th June, 1986 is without any substance and is rejected. Further the provisions of Sastri Award was modified by Desai Award and was not help to the petitioner as there awards are only instructive and not mandatory. In the appointment letter it is none of the condition that at the end of the probationary period the petitioner obtain confirmation automatically even if no order is passed on that behalf. Rather it is contrary. It clearly states that during the probation period his services are able to be terminated at any time, for any reason whatsoever, without assigning any reason. It is a settled law as laid down in 1979 L.L.J. 1 page 161 Popat Lal Vasudev Vyas and Gujarat Water Supply and Sewerage Board and Others, Wherein it has been held that where person is appointed as probationer and probation period is specified, it does not follow that at the end of the specified period, he obtains confirmation automatically even if no order is passed in that behalf unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period or there is service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. If no order is passed at the end of the period it only means that he continues in his post as probationer. Further in A.I.R. 1972 Supreme Court page 873 Kedar Nath Behal Vs. State of Punjab and Others it has been held that where a person is appointed as probationer in any post and the period of probation is specified, it does not follow that at the end of the specified period he obtains confirmation automatically even if no order is passed on that behalf.

8. Further in terms of the appointment letter, the term of the employment of the petitioner was only for 6 months

on probation or for a longer period if considered by the bank and further as it is in the entire discretion to confirm or terminate his services at any time without assigning any reason certainly falls in the exception clause bb of Section 2(o). It provides if termination is carried out in terms of the contract by payment of notice pay same would not amount to "retrenchment".

9. Another feature in the case is the educational qualification. Minimum educational qualification for this post was 'middle pass' 'Matric fail'. Ex. M1 is the application Form filed by the petitioner in which in the column No. 22 which prescribes highest qualification, the petitioner has indicated 'Middle'. In affidavit Ex. M2 along with this application filed by the petitioner at the time of appointment in para 1 indicate as matric, '8th pass' and subsequently matric as well as word pass, there is cutting and then it is written 'under middle'. In cross-examination also he has admitted that he did not mention the word 'failed' in the relevant column of requisite qualification in the application form. He has also admitted in the affidavit that in the affidavit originally it was typed under matric (8th pass). This wrong factum he himself not voluntarily changed but stated in cross-examination that the then branch manager had asked him to make amendment in the affidavit at the time when he submitted the same, although both the management's witnesses appearing as MW1 and MW2 denied this factum but the fact remains that the petitioner voluntarily did not change the wrong factum mentioning his qualifications and in the net result he is not 8th pass although minimum qualification for the post of the peon in the bank is 8th pass and the person who is not suitable or eligible can not claim the post.

10. In view of the discussion in the earlier paras action of the management in terminating the services of the petitioner is justified and no interference is called for. Reference is returned accordingly.

Chandigarh.

Dated : 24-10-1991

ARVIND KUMAR, Presiding Officer
[No. L-12012/803/87-D.II(A)]
V. K. VENUGOPALAN, Desk Officer

नई दिल्ली, 25 अक्टूबर, 1991

क्र.प्र. 2923 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धन के संदर्भ नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, वक्ता न्यायालय, कानपुर के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-10-91 को प्राप्त हुआ था।

New Delhi, the 25th October, 1991

S.O. 2923.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 24-10-1991.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 176 of 1989

In the matter of dispute :

BETWEEN

The Secretary, U.P. Bank Employees Congress, Unit
Sahabad, Rampur-241142.

AND

Regional Manager State Bank of India Region II,
148, Civil Lines, Bareilly-243001.

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-12012/107/89-L.R. (B-3) dated 3-7-89 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of State Bank of India, Bareilly in awarding the punishment of reducing basic pay of Shri Jagat Singh Negi, by one stage and demotion to the post of Messenger/Water boy/Farash and stopping his special allowance of Rs. 67 per month is justified? If not, to what relief the workman is entitled to?

2. The industrial dispute on behalf of the workman Shri Jagat Singh Negi has been raised by U.P. Bank Employees Congress, Rampur (hereinafter referred to as Union).

3. The admitted facts are that while the workman was posted as a Daftari at Haldwani Branch of the Bank, he was served with a Chargesheet dated 24-12-83. The charges were :—

1. That on 11-6-83 at about 11.45 A.M. when Shri S. L. Verma Officer MMGS-II, was discussing some official matter with Shri M. K. Agarwal, Branch Accountant, in the Banking Hall at the Branch, you approached him and asked him to depute you to Regional Office, Bareilly, for delivering the Dak. On his telling you to talk to Branch Jama-dar in the matter, you misbehaved with Shri Verma and also abused him. The actual words uttered by you in this regard are as under :

GALI MEIN BAHIN CHOD DENGEIN

2. That on 12-5-82 at about 2.30 P.M. when Shri D. C. Pant, Clerk was doing some official work in the Branch Lunch Room on a separate table and Sri Subhash Chandra, Clerk was sitting with him along with other employees, you entered in the lunch room in a drunken condition, misbehaved with Shri Subhash Chandra and also abused him. You also threw away the Books/registers lying on the table and also torn out two vouchers details of which is as under :—

- (a) Current Account Debit voucher of U.P. Cooperative Federation Ltd. 'Collection Account' for Rs. 20,57,847.00 dated 11-5-82 and

- (b) Draft Issue Voucher in respect of L.S.C. No. 226 for Rs. 11,396.81 p. dated 11-5-82.

3. That you are in habit of creating disturbances in the smooth functioning of the Bank by writing unnecessary letters to the Branch Manager and also sending letters direct to the higher authorities of the Bank. A few of such instances are as under :—

- (a) On 19-7-83 you demanded a detailed statement of your leave record for the past three years. When the Branch Manager advised you to prepare the statement yourself by sitting in the B.M. Chamber, you instead of preparing the statement exchanged four letters with the Branch Manager on the subject and asked him to provide you a type-writer, a senior staff member, paper, carbon, pencil, rubber etc. for the purpose.

- (b) On 25-10-83, you wrote a letter to the Branch Manager to provide you stamp pad ink, thread, Gum even though all these items of stationery were available with the Record Keeper.

- (c) You wrote a letter dated 24-9-82 to the Chairman of the Bank in regard to closure of your Savings Bank Account No. 7076.

You are thus charged of :—

- (i) Failing to show proper courtesy and consideration towards your superiors and abusing them,
- (ii) Wilfully damaging the Bank's records,
- (iii) Creating disorderly scene on the Bank's premises,
- (iv) Attending office in drunken condition, and
- (v) Acting in a manner highly prejudicial to the Bank's interests.

The chargesheet was replied by the workman on 28-1-84 Shri Ashwani Kumar Sharma who was appointed as Enquiry Officer, held the inquiry. Enquiry Proceedings commenced on 17-5-84. The management closed their evidence before the E.O. on 25-2-85. Thereafter, the E.O. fixed 13-5-85 for defence evidence. Since the workman did not appear on 13-5-85, the E.O. concluded the inquiry proceedings and gave his findings on charges on 19-6-85 holding all the charges as proved against the workman. R.M. III, who happened to be the Disciplinary Authority while agreeing with the findings given by the E.O. gave notice to the workman on 19-6-85 to show cause why he should not be dismissed from service without notice. The show cause notice was duly replied by the workman. After considering the reply of the workman, the Disciplinary Authority modified the proposed punishment and substituted it by reducing the workman's basic pay by one stage and reverting him to the post of Messenger-cum-Water Boy with withdrawal of Special Allowance of Rs. 67 per month. The workman filed an appeal against the order of punishment but the same was dismissed by the Appellate Authority.

4. The Union has assailed the order of punishment on a number of grounds. According to the Union the workman was an active trade union worker and so in order to harass him, the management served him with a chargesheet containing false charges. The E.O. was biased against the workman. He did not give him opportunity to lead evidence in defence at the inquiry. In fact on 13-5-85, on account of his ill health/illness the workman could not attend the inquiry. In this regard he had sent an application for leave to the Branch Manager. Even his defence representative Shri Deepak Kaushal also fell ill at Bareilly. About his illness and his inability to attend the inquiry, he informed the Enquiry Officer by means of a telegram. Instead of adjourning the inquiry, the E.O. without any just cause proceeded ex parte against the workman. The Union, has therefore prayed for setting aside the order of punishment and for his reinstatement, as Daftari with full arrears of wages.

5. The management in their written statement admit that the workman was the Unit Secretary at Haldwani Branch of the Bank, but this had nothing to do with the conduct of the inquiry and the award of punishment. The E.O. held the inquiry proceedings fairly and properly in accordance with the principles of Natural justice. The proceedings in the inquiry commenced from 17-5-84. The workman participated in the inquiry on 17-5-84, but on his written request the inquiry was adjourned to 29-5-84. On 29-5-84, the workman neither participated in the inquiry nor made any request to the E.O. for postponing inquiry. However, he sent his leave application dated 29-5-84 to the Branch Manager, Haldwani without enclosing with it the medical certificate. Despite that on the matter being brought to the notice of the E.O. by the Branch Manager, in the interest of justice the E.O. adjourned the inquiry making it clear that in case the workman absented again the inquiry would be concluded ex parte against him. The workman was on leave from 23-7-84 to 26-7-84 on account of his illness. This fact was brought to the notice of the E.O. by the Branch Manager. The workman made no written request for adjourning the inquiry proceedings to the E.O. Once again, keeping in view the principles of natural justice, the E.O. adjourned the proceedings to 8-8-84. On 8-8-84, the workman again sought adjournment on the ground that his defence representative could not come. Upon that the inquiry was adjourned to 23-8-84. On 8-8-84, the workman although present in the bank, appeared before the E.O. at about 1 p.m. only when the B.M. gave him written instructions. The inquiry was held on 6-2-85, 7-2-85 and 8-2-85 when it was adjourned to 19-2-85. However on the request made by the defence representative vide his letter

dated 14-2-85, the P.O. adjourned the inquiry to 25-2-85. As the inquiry could not be concluded 13-5-85 was fixed in the inquiry. As the workman was absent on 13-5-85, the proceedings were held ex parte and concluded the same day by the E.O. After the conclusion of the proceedings the Branch Manager received the leave application dated 13-5-85, of the workman on the ground of illness. As the E.O. had already concluded the inquiry proceedings, the E.O. took no cognizance of it, specially when no application for adjournment in this regard was addressed to the E.O. According to the management neither the inquiry proceedings nor the order of punishment passed by the Disciplinary Authority and confirmed in appeal by the Appellate Authority suffer from any infirmity.

6. In support of their respective cases both sides have led oral as well as documentary evidence. Whereas the Union has examined the workman, the management have examined Shri Satyupal Ghai, an officer of the Bank.

7. The only point argued in this case is that the E.O. was not justified to proceed ex parte against the workman on 13-5-85, when the workman had applied to the Branch Manager for leave on ground of illness.

8. In this cross examination it is admitted by the workman that inspite of knowledge of dates fixed in the inquiry he was absent on 17-5-84, 27-5-84, 24-7-84, 8-8-84 and 19-2-85. He also admits that he had addressed applications for adjournment to the Branch Manager, Haldwani, Shri Ashwani Kumar Sharma, the E.O. was not the Branch Manager, Haldwani. He was posted at Bareilly and from there he used to come to Haldwani. He never gave applications for adjournment to the E.O. Then he admits that while adjourning the inquiry, the E.O. used to pass this order as well that if on the adjourned date he did not attend the inquiry the case would proceed ex parte against him. Now let us refer to the inquiry proceedings copies of which have been filed by the management with the list of documents dated 13-2-91. The formal proof of all the documents filed with the list has been waived by the authorised representative for the Union. Even the workman has put his signatures on it.

9. It appears that the inquiry commenced on 17-5-84, Ext. M-4, is the copy of inquiry proceedings dated 17-5-84. At the inquiry the workman was also present. First he submitted before the E.O. that his defence representative had not come from Bareilly so far. On that the E.O. waited for him till 12'O Clock and when he did not turn up even by that time, on the application of the workman the inquiry was adjourned to 29-5-84. Ext. M-5 is the copy of application which was moved by the workman before the E.O. on 17-5-84.

10. Ext. M-6 is the copy of proceedings of inquiry dated 29-5-84. Neither the workman nor his defence representative appeared before the E.O. From the inquiry proceedings it appear that on the ground of illness the workman had moved an application for leave to the Branch Manager which application was received by the Branch Manager at about 12.30 p.m. It further appears that he made no separate application for adjournment before the E.O. The E.O. in the interest of justice adjourned the inquiry. Ext. M-7 is the copy of application addressed by the workman to the Branch Manager, Haldwani for grant of leave for 29th and 30th May 1984 on account of his having become unwell all of a sudden.

11. The next date in the inquiry was 24-7-84. Ext. M-8 is the copy of inquiry proceedings dated 24-7-84. It appears from the proceedings that the Branch Manager, Haldwani who happened to be the presenting Officer brought it to the notice of E.O. that the workman had been on leave from 23-7-84 to 26-7-84. It is also mentioned in the proceedings that for adjournment the workman moved no application before the E.O. Again in the interest of justice the E.O. adjourned the inquiry to 8-8-84 after making the observations that there was no sufficient grounds for adjourning the case.

12. Ext. M-11 is the copy of inquiry proceedings dated 8-8-84. It appears from the proceedings that the inquiry officer took up the enquiry at about 11.30 a.m. He was

informed by the Branch Manager, Haldwani that the workman was present in the branch. The workman, however, did not appear before the E.O. despite E.O. having called him. It was only at 12.30 p.m. when the Branch Manager instructed him in writing to appear before the E.O. that the workman appeared before the E.O. at about 1.00 p.m. with the written request for adjournment on the ground that his defence representative had not come. He assured the E.O. that on the next date his defence representative would certainly remain present at the inquiry. On that once again in the interest of justice the E.O. adjourned the inquiry to 23-8-84.

13. Ext. M-12 is the copy of letter from the Branch Manager to the workman written at about 12.30 p.m. asking the workman to appear at the inquiry and Ext. M-13 is the copy of written request made by the workman for adjournment. Ext. M-14 is the copy of letter dated 6-2-85 from the workman to the Branch Manager, Haldwani informing him that at the inquiry his defence representative will be Shri Dipak Kaushal. There is nothing to show that the copy of this letter was also sent to the inquiry officer.

14. It appears that after 8-8-84, the inquiry was taken up on 6-2-85. Ext. M-15 is the copy of inquiry proceedings dated 6-2-85. The workman and his defence representative attended the inquiry on that date. The inquiry continued on 7th and 8th February, 1985 also and thereafter adjourned to 25-2-85. Ext. M-17 is the copy of inquiry proceedings dated 25-2-85. From the proceedings dated 25-2-85 it appears that the P.O. closed his evidence whereupon the inquiry officer ask the defence representative to produce his evidence in defence. After that it was adjourned to 13-5-85.

15. Ext. M-19 is the copy of inquiry proceedings dated 13-5-85. From the inquiry proceedings it appears that the inquiry was taken up by the E.O. at 10.30 a.m. Till 11.30 a.m. neither the workman nor his defence representative appeared at the inquiry. Since the E.O. was informed by the Branch Manager, Haldwani that he had received no information regarding the absence of the workman, the inquiry officer concluded the inquiry. At about 12.00'O Clock the E.O. learnt about the application for leave having been received by the B.M. No separate application was addressed for adjourned to the E.O. The E.O. did not consider it proper to revise the order. However, by means of his letter dated 13-5-85 copy Ext. M-18, the E.O. informed the workman that if he wanted to make any written submission he could do so by 22-5-85.

16. It has been argued from the side of the Union that when it had come to the notice of the E.O. at 12'O Clock that an application for leave on ground of ill health had been received by the Branch Manager, Haldwani he should have adjourned the case in the interest of justice. I am not prepared to accept this argument. The inquiry was being held by the E.O. and not by the Branch Manager. We have seen that even in the past the workman had completely ignored the E.O. Despite that the E.O. had been taking a lenient view and on the basis of the information received from the Branch Manager, Haldwani he had been adjourned the inquiry. Although he was not bound to take notice of such informations, it seems that the workman had been taking no notice of the E.O. We have also seen above that no one date even when he was present in the branch he did not attend the inquiry and even when called by the E.O. he did not appear before him. It was only when the Branch Manager asked by him in writing to appear before the E.O. he appeared before him at about 1.00 p.m. and that too with a written request for adjournment.

17. It will not be in appropriate to remark that for the workman E.O. was a mere non entity. There is also nothing on record to show that after 13-5-85, the workman or his defence representative ever applied to the E.O. for vacating the order dated 13-5-85 and for giving workman an opportunity to lead evidence in defence. Looking to the conduct and state of mind of the workman and his defence representative, I do not see any reason to interfere with the order passed on 13-5-85 by the E.O. concluding the inquiry.

18. Nothing else has been argued before me from the side of the Union. I have gone through the findings of the

E.O. carefully. I do not find that the findings given are in any way perverse.

19. Ext. M-33 is the copy of inquiry report dated 19-6-85. The E.O. held charges Nos. 1 and 2 as proved and charge No. 3 as admitted by the workman. Ext. M-35 is the copy of show cause notice dated 19-6-85 given by the Disciplinary Authority to the workman about the proposed punishment and Ext. M-38 is the copy of order dated 28-9-85 of the Disciplinary Authority awarding the punishment referred to by me while giving admitted facts of the case. Ext. M-40 is the copy of grounds of appeal dated 24-10-85 filed by the workman before the Chief Regional Manager and Ext. M-41 is the copy of letter dated 22-1-86 informing the workman about the dismissal of his appeal. With the said letter was enclosed the copy of order dismissing appeal. I find no illegality either in the procedure or in the orders passed by the disciplinary authority and the appellate authority.

20. Hence, I held that the action of the management of State Bank of India, Bareilly in awarding the punishment of reducing basic pay of Shri Jagat Singh Negi, by one stage and demotion to the post of Messenger/Waterboy/Farash and stopping his special allowance of Rs. 67 per month is justified. The result is that the workman is entitled to no relief.

21. Reference is answered accordingly.

ARJAN DEV, Presiding Officer
[No. L-12012/107/89-IR (B-III)]

का.आ. 2924-— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसूच में, केन्द्रीय सरकार बरेली कारपोरेशन बैंक लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण व श्रम न्यायालय, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-10-91 को प्राप्त हुआ था ।

S.O. 2924.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bareilly Corporation Bank Limited and their workmen, which was received by the Central Government on the 24-10-91.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 123 of 1988

Shri Arun Kumar C/o Shri V. N. Sekhari, 26/104,
Birhana Road, Kanpur.

AND

The Manager, Bareilly Corporation Bank Ltd., Gumti
No. 5, Kanpur.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/1/88-D.I(B) dated 4-10-88 has referred the following dispute for adjudication to this Tribunal for adjudication to this Tribunal—

Whether the action of the management of Bareilly Corporation Bank Limited in terminating the services of Shri Arun Kumar and not considering him for further employment while recruiting fresh hands under section 25H of the Act is justified? If not, to what relief is the workman entitled?

2. The workman's case in brief is that in order to avoid appointment of permanent hands, the management of the bank started a practice of appointing employees on temporary/daily wage basis for doing the duties of a regular nature of sub staff with a view to deprive such workmen

from the benefits of modified Sastry Award including their regularisation. In pursuance of the said practice such appointments used to be made by bank upto a period not exceeding 90 days. In accordance with the said policy, he was appointed as a peon on daily wages on 16-8-85 at bank Gumti No. 5 Kanpur Branch. He discharged the duties of permanent nature similar to that of a regular peon but his services were terminated without any reason and justification w.e.f. 21-12-85. During the said period he had worked for 76 days excluding sundays and holidays numbering about 10. The workman alleges that he was not the junior most at the time of termination of his services. He also alleges that his services were terminated without any notice or notice pay and payment of retrenchment compensation. It is further alleged by him that fresh hands were employed by the bank after termination of his services without giving him any chance of reemployment. Thus the management of the bank violated the provisions of Articles 14, 16 and 21 of the Constitution of India, paras 493, 516, 522 and 524 of the modified Sastry Award and Secs. 25F, 25G and 25H of the I.D. Act. He has, therefore, prayed for his reinstatement with full back wages and all other consequential benefits.

3. The case is contested by the management of the Bank. The management plead that the bank did not adopt the practice of appointing employees on temporary/daily wages with a view to deprive them from the benefits of the modified Sastry Award etc. The management never indulged in such an unfair labour practice. The management admit that the workman had worked at bank's Gumti No. 5 Branch for 76 days on casual basis, at Kanpur. He was appointed on casual basis/daily wages to meet the exigencies of work in the bank with clear understanding that the management would not be under any obligation to continue to employ him on the following day. It was made clear to him that if the work was not required he would be sent back and that the basis of services would be no work no pay.

4. The management bank deny that they ever engaged immediately after the discontinuance of the casual assignment of the workman in any fresh hand. In fact as and when exigencies of work arose, the management engaged other employees who offered themselves for work as such casual assignment were of 1, 2 or three days or for a week. According to the management the workman has not given the names of employees who were junior to him at the time when his services were discontinued. According to the management the workman having worked only for 76 days, the provisions of sec. 25F, 25G and 25H would not be attracted. The management also deny violation of any of the paras of the Sastry Award and Articles of the Constitution referred to by the workman in his claim statement. The management have then raised the legal plea that the reference order is vague as it does not specify the father's name of the workman nor it does it specify the date of termination of his services.

5. In his rejoinder the workman has alleged that the reference order is perfectly valid and proper. I may state here that in the rejoinder even the workman did not specify the names of the employees who were junior to him at the time of his alleged termination of his services nor specified the names of the employees engaged by the management subsequent to his alleged termination.

6. In support of his case, the workman has relied upon oral as well as documentary evidence. He has examined himself. On the other hand, the management have examined Shri S. K. Mehrotra, an officer of the bank.

7. Although in para (6) of the claim statement, the workman has raised a plea that in order to avoid permanent hands, the bank started a practice of appointing employees for a period not exceeding 90 days temporarily/daily wages for doing the duties of a regular nature of sub staff with a view to deprive such workmen from the benefits of Sastry Award including their regularisation, no evidence has been given by him in its support. In the affidavit which he has filed in support of his case is practically silent on the point.

8. The case set up by the workman is that he had worked for 76 days during the period 16-8-85 to 20-12-85. Of course, excluding Sundays/holidays numbering about 10. This does not appear to be correct statement of facts. With the list of documents he has filed the photostat copy of the certificate dated 4-1-86, issued by the manager of the bank regarding the number of days he had worked. This is document no. 2 of list of documents dated 13-3-89. He has proved it by means of his affidavit. It should that he had worked on 16th and 17th August, 1985 and thereafter from 8-10-85 to 20-12-85 (for a total of 60 days). If every day from 16-8-85 to 20-12-85 is counted then total number of days would come to 76 days. It therefore follows that if Sundays are taken into account he would be deemed to have worked only for 76 days. It further appears from the certificate that upto 17-10-85 he was paid a daily wage of Rs. 16.66 paise and thereafter he was paid a daily wage of Rs. 25.85 paise.

9. Even if we take that he had worked for 76 days, in his case the provisions of sections 25F, 25G and 25H of the I.D. Act would not apply. For the application of section 25F it is necessary that the workman must have been in continuous service for not less than one year under an employer prior to the date of his retrenchment. Section 25G of the Act is to be read with Rules 77 of the I.D. (Central) Rules, 1957 and Sec. 25H of the Act is to be read with Rule 78. Rules 77 and 78 apply to a workman as defined in Rule 76 of the I.D. Central Rules, 1957. According to Rule 76 such a workman will be a person who has not worked continuously for less than one year prior to the termination of his services. Continuous one year service within the meaning of section 25B I.D., means working for 240 days atleast during a year. Therefore, in his case the provisions of section 25G and 25H I.D. Act too are not attracted.

10. In his claim statement and rejoinder he has not named the persons who were junior to him at the time of his retrenchment nor he has given the names of those who were subsequently engaged by the management of the bank. For the first time he named certain persons who were engaged subsequently to the termination of his services in para (4) of his affidavit. About them in his cross examination he has stated that he does not know them personally. He also does not know for how many days they had worked in the bank. Lastly he has expressed his ignorance on the point whether they are still in the service of the bank or not.

11. Thus I find that the workman has no case at all. Hence the action of the management in not allowing him to do duty after 20-2-85 cannot be held as unjustified. Further the action of the management in not calling him for reemployment cannot be held as unjustified.

12. Reference is answered accordingly against the workman.

ARIAN DEV, Presiding Officer
[No. L-12012/1/88-D.I(B)]

नई दिल्ली, 30 अक्टूबर, 1991

का.घा. 2925:- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धन के संबंध में निम्नलिखित के बीच उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण व श्रम न्यायालय, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 30-10-91 को हुआ था

New Delhi, the 30th October, 1991

S.O. 2925.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 30-10-91.

ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(158)/1989

PARTIES :

Employers in relation to the management of State Bank of India, Gwalior and their workman Shri V. S. Rajwade, Head Clerk, represented through the General Secretary, State Bank of India Employees Union C/o State Bank of India, Godha Colony Branch, 924, Niwala Tonk, Banwarkua Road, Indore-452001.

APPEARANCES :

For Union—Workman in person.

For Management—Shri M. V. Sahastravudhe.

INDUSTRY : Banking DISTRICT : Gwalior (M.P.).

AWARD

Dated : October 21th, 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-12012/88/89-IR(B-3) Dated 11th August, 1988, for adjudication of the following dispute:—

"Whether the action of the management of State Bank of India in relation to the Regional Manager, SBI, Gwalior in debarring Shri V. S. Rajwade, Head Clerk for promotion for 2 years is justified? If not to what relief the workman is entitled to?"

2. This claim of the workman, Shri V. S. Rajwade, arises out of the order of the management No. GRO/RI/87/93 dated 19-10-87 debarring him for promotion for the period of two years with effect from 14-8-87 on the ground that he refused to comply with the orders No. S/87/32 dated 31-5-1987 with the stipulated period hence invoking provision of Para 8(b) of Hand Book on Staff Matters 1976 the alleged order was passed.

3. It is said that the workman, Shri V. S. Rajwade, was working as Godown Keeper (L.D.C.) at State Bank of India, Jayendra Gani Branch, Gwalior. As the vacancies of Head Clerk and Teller were vacant in the year 1987 at some branches of the Bank they offered promotion to certain employees of the staff who were eligible as per laid down norms. The workman was one of them. He was offered promotion as Head Clerk on a vacant post at Morena vide letter No. S/87/32 dated 31-5-1987. It is said that the workman did not comply with the said orders hence this dispute.

4. The workman says that in response to the said order he submitted a petition to the Bank that being senior most employee on the list of Zonal Seniority he was eligible for appointment locally. One Shri O. P. Srivastava who was working as Head Clerk at Mayur Market Branch Gwalior till March 1987 and was transferred to Regional Office, Gwalior, a vacancy arose at Mayur Market Branch. Gwalior and the workman; could be conveniently posted on the said post after the said Shri O. P. Srivastava was relieved but instead a junior employee was paid officiating allowance of Head Clerk at Mayur Market Branch Gwalior.

5. That the said workman submitted an application to the Bank requesting them to appoint him as Head Clerk at the existing vacancy at Mayur Market Branch Gwalior. The said application of the workman was arbitrarily rejected and instead of justice being done to him he was debarred from further promotion for a period of two years. The action of the management was illegal. The Branch Manager, Jayendra-gani Branch, Gwalior had advised the Regional Office vide endorsement of his letter S/87/64 dated 14-8-87 (wrongly dated 14-7-87) that Shri Rajwade being on leave be either relieved or debarred. When Shri Rajwade resumed duty on 26-9-87 he expressed his willingness to proceed to Morena despite the fact that he was illegally debarred vide Jayendra-gani Gwalior Branch letter GRO/RI/793 dated 19-10-87 with retrospective effect from 14-8-87. The Bank has no authority to debar any employee with retrospective effect.

6. Thus the management has deprived the workman from higher post which carries an allowance of Rs. 325 per month because he was a member of unrecognised union. The action of the management was arbitrary, illegal, discriminatory and is bound to be set aside and the workman is entitled to be posted as Head Clerk at Gwalior from 1-6-87 and is also entitled to arrears @Rs. 325 per month onwards and any other relief with costs.

7. The management says that the order of promotion specifically stipulated as follows :—

You will be initially on 6 months probation from your date of joining. Please confirm in writing within 15 days of receipt of this letter that you accept the above captioned appointment. Further, please note that in case of refusal, you will be debarred for future promotion in Award & Non-Award categories for a period of 2 years.

8. Shri Rajwade did not confirm in writing neither within the stipulated period of 15 days nor thereafter his acceptance of his captioned promotion on the post of Head Clerk. Thus he refused to accept the offer of his appointment as Head Clerk at their Morena Branch by not fulfilling the said condition precedent to the acceptance. Since Shri Rajwade refused his promotion at Morena Branch, he was debarred for promotion in future for a period of 2 years with effect from 14-8-87 by virtue of Hand Book of Staff Matters 1976, Para 8(b) which runs as follows :—

"8(b) : If he (i.e. employee) refuses to accept the post or does not indicate his willingness within the stipulated period he is debarred from promotion/higher appointments in the 'Award' or 'Non-Award' category for a period of two years and the bank then proceeds to consider the next eligible employee or the post."

9. Smt. Swari Shinde was also offered promotion for the post of Teller equivalent to Head Clerk at A.B.C. Jawara Branch along with Shri Rajwade. Management believes that Smt. Shinde is the member of the Union to which the petitioner Union considers as rival union and which was recognised by the management. But management having considered all the employees as equals also debarred her because she did not fulfil the condition of her promotion.

10. Shri Rajwade was not the senior most employee on the list of Zonal Seniority. He was not eligible for appointment locally. No vacancy was existing at the Mayur Market Branch, Gwalior at the time of any petition which has been referred. Posting of Shri O. P. Srivastava or payment of allowance to any employee of Mayur Market Branch, Gwalior are not connected with the refusal of Shri Rajwade to accept the offer of management. Placing of any employee at any place is the prerogative of the management. No vacancy exists. The action of the management is neither discriminatory nor illegal. The period during which Shri Rajwade was on leave has not been shown. Management denied that on 26th September, 1987 the workman expressed his willingness to proceed to Morena. It is denied that Shri Rajwade was debarred because he was a member of unrecognised union. The claim is liable to be rejected.

11. Reference was the issue in this case.

REASONS FOR MY FINDINGS

12. Ex. W/9 is the Memorandum No. BR/SC/9441 dated 18th November, 1985, according to which Region Seniority of Clerical Staff to be considered for in cadre promotion, was issued. This is a list of 34 employees and appended to it is the list of workmen who were proposed for promotion and were promoted. Post and name of Shri Rajwade finds place at Sl. No. 4.

13. Ex. M/1 is the letter of promotion addressed to the workman, according to which Regional Office, Gwalior, vide their letter No. GWI/1/AS/583 dated 18th May, 1987, had advised the Branch Manager that he is being posted at their Morena Branch in the captioned post viz. Head Clerk, Morena Branch. According to this order of promotion he was initially on 6 months probation from the date of his join-

ing. Term as given in para 3 of the letter (Ex. M/1) is as under :—

"3. Please confirm in writing within 15 days of receipt of this letter, that you accept the above captioned appointment. Further, please note that in case of refusal, you will be debarred for future promotion in Award & Non-Award categories for a period of 2 years."

14. Ex. M/2 is photo stat copy of Administration and administrative practices. Para 2(b) on which the management has relied runs as follows :—

"(b) An employee transferred to another Branch as Head Clerk is allowed to return to his earlier Branch, if a vacancy exists at that Branch, provided he has completed a service of at least one year at the new Branch."

15. It is not clear from evidence on record as to on what date the letter Ex. M/1 dated 30th May, 1987 was received by the workman concerned but from the fact that the letter was issued by the same Branch in which the workman concerned was working, it can be presumed that the workman must have received the letter on the same date or within a day or two thereafter. However, as per Ex. M/4 which is letter of the workman dated 10th June, 1987 the workman raised objection to his appointment as Head Clerk at Morena and submitted that because he is senior to Shri O. P. Srivastava whose confirmation in Bank is 2nd June, 1975 and as such as per policy he should have been given appointment in the local Branch. He further prayed that because he is permanently physically handicapped he sought for the advice of the management for his new place of posting. From this letter also it can be well presumed that the letter of appointment must have been received by the workman within a day or two from the date of issuance of letter Ex. M/1.

16. Now the question arises as to how the letter is to be interpreted. It was certainly a refusal to the promotion, but the letter Ex. M/1 was unequivocally in terms as to whether the workman concerned is prepared to accept his appointment of Head Clerk at Morena Branch and no option was left to him except either to give his consent or to give a refusal. But here is a case where the workman has neither given his consent nor refusal but he made a different representation altogether as pointed out above. In letters it amounts to the refusal to the acceptance of the above captioned post of Ex. M/1 within 15 days of the receipt of the letter. But should be go by the letters or the spirit behind it. The whole case hinges on this sole point.

17. One argument can be that first he should have given his acceptance within 15 days and joined at Morena and thereafter he could have made representation. This course certainly was not adopted by the workman concerned but he made a representation as pointed out above.

18. Now we come to Ex. M/5 which is a letter No. S/87/55 dated 18th July, 1987, according to which the workman was informed by the management that his representation dated 10th June, 1987 is not acceptable because the case of Shri O. P. Srivastava cannot be compared with his case and accordingly he was directed to keep himself ready to join at Branch Morena. It is clear from this letter that the condition of 15 days period was waived and as per Ex. M/5 dated 18th July, 1987 the workman was directed to join at Morena. There is again a letter of the management Ex. M/6 dated the 7th August, 1987 according to which Shri Rajwade was informed that since the replacement of promoted employee was not done the promoted employee cannot be retained and therefore the officer concerned was directed to relieve Shri Rajwade and Smt. Shinde with immediate effect and to confirm this fact to the Regional Office. It was further directed that in case Shri Rajwade and Smt. Shinde expressed their inability to give their acceptance for promotion they should be debarred from promotion for two years from the date of the receipt of the letter to the said office and the office be informed accordingly. It appears that the letter Ex. M/1 was issued in consequence of letter Ex. M/6. Thus it appears that the period of 15 days was condoned for another reason because the workmen were not relieved.

19. Ex. M/7, letter No. S/87/64 appears to be dated 14th July, 1987, according to which Smt. Shinde was debarred for promotion.

20. Coming to Ex. M/3 (it is the copy of Ex. M/7 and on it endorsement to the Regional Office has been made to the effect that Shri Rajwade is on leave from 11th August, 1987 to 14th August, 1987 and therefore he will be relieved/debarred after he attend the office.

21. Ex. M/1 is the letter dated 19th October, 1987 according to which Shri Rajwade was debarred for promotion for two years with effect from 14th August, 1981.

22. Ex. M/10 is the letter of the Regional Manager dated 26th March, 1990, letter No. RM/I/Staff according to which it was informed that officiating allowance of Head Clerk was paid to a senior most clerk at Mayur Market Branch Gwalior till June 1987 after the relieve of Shri O. P. Srivastava in the month of March 1987.

23. It appears from this letter Ex. M/10 that Shri O. P. Srivastava was officiating as Head Clerk being the senior most clerk was relieved in the month of March 1987 but there is no material to find out as to how his vacancy was filled in. It appears that the representation Ex. M/4 relates to Shri O. P. Srivastava only.

24. There is no material on record to show that the workman was senior to Shri O. P. Srivastava or that as per policy he was entitled to be promoted at Mayur Market Branch, Gwalior. The general principle is that the transfer and posting is a prerogative of the master. Thus the presumption would be that the employee had to comply with the promotion order of the master unless it was contrary to any law, rule, policy, procedure, practice or otherwise. Nothing has been shown to me in this regard.

25. There is no material on record to show that as to on what date he had joined and was relieved but from Ex. M/8 it can be said that he was relieved latest by 19th October, 1987 and was debarred and thus he cannot be debarred with effect from 14th August, 1987 for promotion. But if this would be the finding of this Tribunal it would be against the interest of the workman because his debar for promotion will lift two years after 19th October, 1987. Before naming with the award I must say that according to Shri Rajwade he resumed duty on 26th September, 1987 and expressed his willingness to proceed to Morena but there is no material before this Tribunal to give a finding in favour of the workman in this regard.

26. Reference being without substance is liable to be decided against the workman concerned and the action of the management is justified. Reference is accordingly answered as follows:—

The action of the management of State Bank of India in relation to the Regional Manager, SBI, Gwalior in debarring Sri V. S. Rajwade, Head Clerk for promotion for 2 years is justified. He is not entitled to any relief. No order as to costs.

V. N. SHUKLA, Presiding Officer

[No. I-12012/88/89-TR(B-III)]

का.प्र. 2926:— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसर्जन में, केन्द्रीय सरकार भारतीय रिजर्व बैंक, नागपुर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्विष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, व श्रम न्यायालय, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-91 को प्राप्त हुआ था।

S.O. 2926—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Reserve Bank of India, Nagpur and their workmen, which was received by the Central Government on the 30th October, 1991.

ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R) (130)/1989

PARTIES :

Employers in relation to the management of Reserve Bank of India, Nagpur

AND

Their workman, Shri S. S. Daware represented through the Reserve Bank of India Employees Association C/o R.B.I., Nagpur-1 (MS).

APPEARANCES :

For Union—Shri T. D. Raikwar.

For Management—Shri G. M. Patil.

INDUSTRY : Banking. DISTRICT: Nagpur (M.S.)

AWARD

Dated, October 14, 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-12011/61/88-DI(B)-I dated 6th July, 1989, for adjudication of the following dispute :—

"Whether the Reserve Bank of India, Nagpur justified in disallowing the fare of 1st Class to Shri S. S. Daware when he actually travelled in a lower class due to non-issue of first class ticket by station on account of non-availability of berths? If not, to what relief the employee concerned is entitled to?"

2. Union has filed its statement of claim on behalf of workman. Management did not file any statement of claim.

3. The case was taken up at Nagpur on 9th October, 1991 at the request of the parties, on which date parties came to terms of compromise and filed a Compromise Petition duly signed and verified by the parties. The terms of compromise are as under:—

"That the Reserve Bank of India management is agreeable to pay the claim of Shri S. S. Daware as per Bank's submission dated 3rd January, 1990 stating that as Shri Daware has commenced his return journey from Ahmednagar at 2.30 hrs. his claim to compensation for travel by lower class for his return journey from Ahmednagar to Nagpur can be admitted as per revised instructions on his giving his declaration in the prescribed proforma in terms of Award passed by the Honourable C.G.I.T., Jabalpur dated 12th July, 1991 in an identical case of Shri V. L. Deshpande.

The Reserve Bank of India Employees Association hereby agrees to the proposal of Reserve Bank of India management with reference to Shri S. S. Daware's claim."

4. The above terms of compromise are just and fair. This disposes of the dispute referred to this Tribunal. Award is recorded in terms of compromise arrived at between the parties. No order as to costs.

V. N. SHUKLA, Presiding Officer

[No. I-12011/61/88-D.I (B)-I]

का.प्र. 2927:— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसर्जन में, केन्द्रीय सरकार भारतीय रिजर्व बैंक, नागपुर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्विष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण व श्रम न्यायालय जबलपुर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 30-10-91 को प्राप्त हुआ था।

S.O. 2927.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Reserve Bank of India, Nagpur and their workmen, which was received by the Central Government on the 30th October, 1991.

ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)/(64)/1989

PARTIES:

For Union—Shri A. D. Deshpande.

For Management—Shri G. P. Patil.

INDUSTRY : Banking DISTRICT : Nagpur (M.S.)

AWARD

Dated, October 14, 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-12011/28/88-DIB dated 13th March, 1989 for adjudication of the following dispute :

"Whether the R.B.I. Nagpur is justified in disallowing the fare of 1st class to Shri A. B. Tare when he actually travelled in lower class due to non-issue of 1st class ticket by station on account of non-availability of berth? If not, to what relief the employee concerned is entitled to?"

2. Workman has filed its statement of claim. Management did not file any statement of claim.

3. At the request of both the parties the case was taken up at Nagpur on 9th October, 1991 on which date parties filed a Compromise Petition duly signed and verified by the parties. The terms of compromise are as under :—

That the management is agreeable to pay the claim of Shri A. B. Tare as per Bank's submission dated 3rd January, 1990 stating that as Shri Tare's journey from Solapur to Nagpur involved change of trains at midnight at Daund, he can be paid compensation for travel by lower class for his journey from Daund to Nagpur as per the revised instructions contained in paragraph 2(a) of Bank's submission, on his giving a declaration in the prescribed proforma, in terms of the Award passed by the Honourable Central Government Industrial Tribunal-cum-Labour Court, Jabalpur dated 12th July, 1991 in an identical case of Shri V. L. Deshpande.

The Reserve Bank Employees Association hereby agrees to the proposal of the Reserve Bank of India management with reference to Shri Tare's claim.

4. The above terms of compromise are just and fair. I, therefore, record my award in terms of compromise and make no order as to costs.

V. N. SHUKLA, Presiding Officer

[No. L-12011/28/88-D.I(B)]

S. C. SHARMA, Desk Officer

नई दिल्ली, 28 अक्टूबर, 1991

का.प्र. 2928:- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उद्योजक वर्ग/नियंत्रण एनीकाम प्रोजेक्ट (ओ.एफ.सी.), लखनऊ के प्रबंधन के संबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार की 25-10-91 को प्राप्त हुआ था।

New Delhi, the 28th October, 1991

S.O. 2928.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Divisional Eng. Telecom Proj. (OFC), Lucknow and their workmen, which was received by the Central Government on 25-10-91.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 268 of 1990

In the matter of dispute :

BETWEEN :

Shri Mohammad Jami,
C/o. Sh. V. N. Sekhari,
26/104 Birhana Road,
Kanpur.

AND

Divisional Engineer,
Telecom Project (O.F.C.),
Chandra Niwas,
Kapurthala,
Aliganj, Lucknow.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-40012/15/90 IR(DU) dt. 2/8-11-90, has referred the following dispute for adjudication to this Tribunal :—

Whether the action of management of Divisional Engineer Telecom Project (OFC), Lucknow in terminating the services of Shri Mohammad Jomy w.e.f. 19-3-89 is justified? If not to what relief he is entitled to?

2. The workman's case is that he was engaged as a Driver by the management on 12-6-85 and he worked as such till 19-3-89, when his services were terminated illegally without compliance of the provisions of sec. 25F and 25G I.D. Act. Even subsequently he was not called for employment when fresh hands were employed by the management. Thus the management also violated the provisions of sec. 25H of the I.D. Act. He has, therefore, prayed for his reinstatement with full back wages after declaring the order of his termination as illegal.

3. In this case the management has not filed written statement. The case was therefore ordered to proceed ex parte against the management on 14-6-91.

4. In support of his case, the workman has relied upon oral as well as documentary evidence. He has proved his by his affidavit dated 6-8-91.

5. Since he had worked for more than 240 days during the period of one year preceding the date of termination of his services, the action of the management in terminating his services cannot be upheld being illegal. Breach of provisions of Sec. 25G and 25H have also been proved by the workman.

6. Held that the action of the management in terminating the services of the workman w.e.f. 19-3-89 was neither legal nor justified. The workman is therefore entitled to reinstatement with full back wages.

ARJAN DEV, Presiding Officer
[No. L-40012/15/90-IR (DV) (Pt.)]

का.पा. 2929:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब डिबीजनल आफिसर (टेलीग्राफ बिकानेर के प्रबन्धन क्षेत्र के संबंध में) और उनके कर्मचारियों के बीच, अनुबंध में निर्विष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, बिकानेर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-10-91 को प्राप्त हुआ था।

S.O. 2929.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Bikaner as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.D.O. (Telegraph) Bikaner and their workmen, which was received by the Central Government on 24-10-91.

अनुबंध

औद्योगिक विवाद अधिकरण एवम्

अम न्यायालय, बिकानेर

केन्द्रीय अम विवाद सं. 1 अम. 1989

श्री धार. के. भाटिया

माफत—जनरल सेक्रेटरी, औद्योगिक अधिकरण अम संगठन, अम्बेडकर सैकल, बिकानेर

—प्राचीन अमिक

बनाम

सब डिबीजनल आफिसर (टेलीग्राफ), बिकानेर,

—विपक्षी नियोजक

प्रसंग प्रसंगित धारा 10(1) (ब)

औद्योगिक विवाद अधिनियम, 1947

उपस्थिति

न्यायाधीश—श्री पी. एस. शुक्ला, धार. एच. जे. एस.

1. श्री मोहम्मद मुयताक भाटी, अधिवक्ता अमिक की ओर से।
2. श्री हरेन्द्र कुमार महोदय, अधिवक्ता नियोजक की ओर से।
दिनांक : 3 अगस्त, 1991

प्रबंध

अम मंत्रालय, भारत सरकार ने अपने आदेश सं. एल-40012/8/88-डी-2 (बी) दिनांक 20 मार्च 1989 के द्वारा प्रेषित इस प्रसंग के अन्तर्गत निम्न विवाद निपटारे हेतु प्रेषित किया था :—

“क्या सब डिबीजनल आफिसर (टेलीग्राफ), बिकानेर के प्रबन्धन क्षेत्र की ओर धार. के. भाटिया की 15-9-84 से सेवाएँ समाप्त करने की कारवाई स्वीकृत है? यदि नहीं तो यह कर्मचारों किस अनुतोष का हकदार है और किस तारीख से?”

2. उपर्युक्त प्रसंग के अन्तर्गत अमिक ने अपना वादा प्रस्तुत करते हुए यह परखा कि विपक्षी ने उसे अपने विभाग में टीफन बॉय व टी मेकर के पद पर 1-12-83 को नियुक्त किया था और वह लगातार 15-9-84 तक कार्य करता रहा किन्तु नियोजक ने आदेश दिनांक 18-9-84 के द्वारा 15-9-84 से उसकी सेवाएँ समाप्त कर दीं। उसका पक्ष है कि वह 240 दिनों से अधिक सेवा पूर्ण करने के कारण उसका सेवामुक्ति छंटनी है जिससे नोटिस प्रथम नोटिस देतन दिने बिना उसकी सेवाएँ समाप्त करना 15-9-84 का उल्लंघन है। उसने यह भी पक्ष रखा है कि उसको बुलावना नहीं दिया गया और उसके पश्चात् नियुक्त कर्मचारी राधेश्याम स्वामी व अन्य आज तक कार्यरत हैं, जिससे पहले आयें पाछे जायें के सिद्धांत की भी अनुपालना नहीं की गई। उसका कथन है कि उसके विरुद्ध कोई बर्तानावा जॉब नहीं की गई और प्राकृतिक न्याय के सिद्धांतों के विपरीत

उसकी सेवामुक्ति की गई जिससे उसने सेवामुक्ति को अपास्त किये जाने की प्रार्थना की।

3. नियोजक ने अपना निखिल कथन प्रस्तुत करते हुए वह प्रारंभिक आपत्ति उठाई कि अमिक का काम चल सकने योग्य नहीं है क्योंकि विपक्षी उसका न तो नियोजक था और न उसे सेवामुक्ति किया है और यह पक्ष रखा कि प्राचीन का नियोजक तथा सेवा मुक्ति अधिकारी तो सचिव रिक्रियेशन क्लब था जो पक्षकार नहीं है जिससे यह प्रसंग वर्तमान रूप में चल सकने योग्य नहीं है। विपक्षी ने यह भी पक्ष रखा कि विपक्षी के द्वारा न तो अमिक को नियुक्त किया गया और न उस सेवामुक्ति किया गया जिनसे प्राचीन का समस्त क्लेम अस्वीकार करते हुए यह आपत्ति भी उठाई कि सब डिबीजनल अधिकारी (टेलीग्राफ) के कार्यालय में कुछ कर्मचारियों ने मिलकर एक रिक्रियेशन क्लब खोला था जो विपक्षी कार्यालय का भाग नहीं था, जिसमें क्लब सचिव ने अमिक को अटेंडेंस टी मेकर रखा और सचिव के द्वारा ही उसकी सेवाएँ समाप्त की गई जिससे प्राचीन व विपक्षी के मध्य कोई औद्योगिक विवाद भी नहीं है।

4. अमिक ने अपना जबाबलजवाब प्रस्तुत करते हुए विपक्षी की आपत्तियों को अस्वीकार किया और अपने क्लेम को पुनः पुष्टि की।

5. उपर्युक्त दावे तथा निखिल कथन के आधार पर इस प्रकरण में निम्न विचारणीय बिन्दु प्रकट होते हैं :—

1. क्या विपक्षी प्राचीन अमिक का नियोजक नहीं है?
और प्राचीन रिक्रियेशन क्लब का कर्मचारी है जिसे क्लब के सचिव ने नियुक्त किया था जिसका विपक्षी से कोई सम्बन्ध नहीं है जिससे प्राचीन एवं विपक्षी के मध्य कर्मकार व नियोजक का सम्बन्ध स्थापित नहीं है।
2. क्या अमिक ने 240 दिवस कार्य कर लिया है और वह औद्योगिक विवाद अधिनियम के प्रावधानों का संरक्षण प्राप्त करने का अधिकारी है?
3. क्या अमिक की यह सेवा मुक्ति “छंटनी है अथवा हेतु औद्योगिक विवाद अधिनियम के प्रावधानों का अनुपालना न किये जाने से ऐसा छंटनी दूषित है?
4. अनुतोष?
6. उपर्युक्त बिन्दुओं की सिद्ध करने हेतु अमिक धार. के. भाटिया डब्लू. डब्लू.—1 ने स्वयं को साक्ष्य गृह में प्रस्तुत किया, नियोजक की ओर से प्रमिल कुमार सक्सेना—एम. डब्लू.—1 तथा अनन्ताल गुप्ता एम. डब्लू.—2 साक्ष्यगृह में प्रस्तुत हुए हैं।
7. उपर्युक्त साक्ष्यवर्णन, तथा पक्षकार मांभाषणार्थन के तर्कों श्रवण के पश्चात् उपर्युक्त प्रत्येक बिन्दु पर मेरे विचारित निष्कर्ष निम्न हैं :—
बिन्दु सं. 1

8. अमिक ने स्वयं की विपक्षी के प्रधान टाफन बॉय व टी मेकर पद पर नियुक्त किया जाना अमान्य किया है, अमिक का नियुक्तिपत्र प्रथम एम.—2 स्वीकृत पत्र है, इस पत्र के द्वारा अमिक रवि कुमार को एस. डी. बी. (टेलीग्राफ) टाफन रूम में अटेंडेंस के पद पर 150—275 स्कॉल में महंगाई भत्ते के साथ रखा गया। इस नियुक्ति पत्र पर हस्ताक्षर सहित एस. डी. बी. (टेलीग्राफ) का मुद्रा दो स्थानों पर लगा हुआ है और उसके नाचे रिक्रियेशन क्लब एस. डी. बी. (टेलीग्राफ) आफिस की या मुद्रा लगा हुआ है। नाचे कार्यालय प्रति का पृष्ठांकन के साथ ए. के. सक्सेना के हस्ताक्षर के नाचे प्रसाधित टाफन रूम एस. डी. बी. (टेलीग्राफ) कार्यालय बिकानेर लिखा गया है। इस पत्र को आधार बनाकर अमिक यह पक्ष रखता है कि वह एस. डी. बी. (टेलीग्राफ) द्वारा नियुक्त किया गया था और इसी पक्ष को आधार बनाकर विपक्षी

नियोजन का यह कहना है कि यह कथन की ओर से सचिव व अध्यक्ष को हीनत्व से प्रदान किया गया है एवं इस, माध्यम का साक्ष्य एम. डब्ल्यू.-1 प्रतिलिपि तथ्य एम. डब्ल्यू.-2 चिन्तनलाभ ने प्रस्तुत किया है। यहाँ श्रमिक ने प्रदर्शित डब्ल्यू.-1 मोमो को भी अपना आधार बनाया है जिसमें उसे लिखे गये पत्र पर उप मण्डल अधिकारी (तार) का मुहर लगाकर हस्ताक्षरित किया गया है और पत्र प्रदर्शित डब्ल्यू.-2 पर भी वे अपने को आधारित करते हैं, जो पत्र उप मण्डल अधिकारी, (तार) कार्यालय द्वारा वेन भूषान अधिकारी को पत्र लिखा गया था जिसमें यह वर्णित किया गया है कि "श्री रजि कुमार भाटिया को इस कार्यालय के टिफिन रूम में 1-12-83 से रखा गया था"। प्रदर्शित डब्ल्यू.-3 मनीऑर्डर कृपण पर भी वे आधारित करते हैं जिसके द्वारा उन्हें भुषान किया गया है और इस मनीऑर्डर कृपण पर एस. डी. ओ. (टेलोग्राफ) का मुहर लगी हुई है। पत्र प्रदर्शित एम.-1 पर भी तीन स्थानों पर एस. डी. ओ. (टेलोग्राफ) की मुहर लगी है किन्तु दो स्थानों पर सचिव, रिक्रियेशन क्लब के हस्ताक्षर और मुहर भी है। इस साक्ष्य और इन प्रपत्रों को आधार बनाकर श्रमिक का यह पक्ष है कि प्रपत्र डब्ल्यू.-1 और 2 पत्र उसे एम. डी. ओ. (टेलोग्राफ) द्वारा प्रदान किये गये हैं जो यह स्पष्ट प्रमाणित करते हैं कि उसे एम. डी. ओ. (टेलोग्राफ) द्वारा ही नियुक्त किया गया था जिसका समर्थन प्रदर्शित एम.-2 पत्र से भी होता है। किन्तु इस प्रकरण में पलायनी पर एक पुस्तक-“एग्जिनिस्ट्रिब इन्स्ट्रक्शन्स ऑन डिपार्टमेंटल केन्टीनल इन गवर्नमेंट ऑफिस एण्ड इण्डस्ट्रियल एस्टेब्लिशमेंट्स” भी प्रस्तुत हुई है। इस पुस्तक में ऐसे निर्देश हैं कि जिनके आधार पर केन्द्रीय सरकार के अधीन विभागों में केन्टीन बनाई जाती है। इनके प्रकट है कि ऐसी केन्टीन सेतन पर सचिवी प्राप्त करती है और अन्य सारी सुविधायें प्राप्त करती है, इस पुस्तक में ऐसी केन्टीन मैनेजिंग कमेटी द्वारा कण्ट्रोल किये जाने का प्रावधान है, इनसे यह भी प्रकट है कि विभाग जिसकी लोकलिटी में केन्टीन होती है-उसका मुखिया ही जेयरमन मैनेजिंग कमेटी होता है। वार्षिक खातों के सम्बन्ध में भी यह प्रावधान है कि केन्टीन या टिफिन रूम में हुए व्यय का हिसाब भी कार्यालय द्वारा रखा जाय। ये प्रावधान इस प्रकार प्रकट करते हैं कि विभाग द्वारा टिफिन रूम के लिये नियोजित किये गये कर्मकार संबिधान के अनुच्छेद 311 के अर्थ में सरकारी कर्मचारी होते हैं।

9. रेलवे केन्टीन के कर्मचारी के मामले में उच्चतम न्यायालय का निर्णय एम. एम. आर. खान व अन्य बनाम भारत संघ व अन्य-1990 ए. आई. आर. (एस. सी.) 937 मेरे समक्ष लब्धित इस मामले में भीप्रकार प्रभावशील होता है। माननीय उच्चतम न्यायालय के समक्ष लब्धित इस मामले में यह विवाद था कि रेलवे द्वारा चलाई जा रही केन्टीन टिफिन रूम के कर्मचारियों की स्थिति क्या है? उच्चतम न्यायालय ने यह वर्गीकृत करते हुए कि कुछ केन्टीन या टिफिन रूम वैधानिक केन्टीन हैं और कुछ अन्य प्रकार के नोन-स्टेड्यूटरी रिकग्नाइज्ड व नोन रिकग्नाइज्ड श्रेणी की परिभाषित की है। उच्चतम न्यायालय ने “एग्जिनिस्ट्रिब इन्स्ट्रक्शन्स ऑन डिपार्टमेंटल केन्टीनल इन गवर्नमेंट ऑफिस एण्ड इण्डस्ट्रियल एस्टेब्लिशमेंट्स” को व्याख्या करते हुए अपने निर्णय में यह अभिनिर्णित किया कि स्टेड्यूटरी केन्टीन में उनके कर्मचारी रेलवे कर्मचारी के समान स्तर प्राप्त करने के अधिकारी हैं। नोन-स्टेड्यूटरी रिकग्नाइज्ड केन्टीन के कर्मचारियों के बारे में विस्तृत विश्लेषण करते के पश्चात् यह अभिनिर्णित किया कि ये कर्मचारी स्टेड्यूटरी कर्मचारियों के समान माने जाने योग्य हैं किन्तु नोन-स्टेड्यूटरी व नोन-रिकग्नाइज्ड केन्टीन के कर्मचारियों की किसी भी प्रकार से रेलवे कर्मचारी का स्तर प्राप्त करने के अधिकारी नहीं होना बताया है।

10. मेरे समक्ष लब्धित मामले में जो तथ्य प्रस्तुत किये गये हैं उनसे यह प्रकट है कि श्रमिक नोन स्टेड्यूटरी रिकग्नाइज्ड केन्टीन/टिफिन रूम का श्रमिक था और इस कारण उच्चतम न्यायालय के निर्णय के अनुसार श्रमिक ऐसी केन्टीन का कर्मचारी होने के कारण विभाग के अन्य कर्मचारियों

के समान स्तर प्राप्त करने का अधिकारी है। यह उन्नीय है कि मेरे समक्ष प्रपत्रों की ओर से यह आपत्ति नहीं की गई है कि विवादप्रत टिफिन रूम उच्चतम न्यायालय के निर्णय के अनुसार नोन-स्टेड्यूटरी नोन-रिकग्नाइज्ड केन्टीन की परिभाषा में आता है। वे ऐसा नहीं कर भी सकते क्योंकि ऐसे तथ्यों से प्रतीत नहीं होता है। उच्चतम न्यायालय ने अपने निर्णय के पैरा सं. 30 में ऐसी केन्टीन की स्थिति को विवेचित करते हुए यह अभिमत प्रकट किया है कि ऐसी केन्टीन को फर्नीचर-पानी आदि उपलब्ध नहीं करने में कोई सख्ती या ऋण भी प्राप्त नहीं होता। मेरे समक्ष लब्धित मामले में न केवल अतिरिक्त कुल मन्त्रों एम. डब्ल्यू.-1 ने यह स्वीकार किया है कि सचिवी मिलनी थी अपितु चमननाथ एम. डब्ल्यू.-2 ने भी यह स्वीकार किया है कि निवेशन के नियमों ने पश्चिमी आशों थी। ऐसी स्थिति में जो प्रपत्रों के अन्तर्गत तारीखें कार्यालय में टिफिन रूम चलाया जाता था जिन सारी सुविधा प्राप्त है तो ऐसी केन्टीन या टिफिन रूम नोन-स्टेड्यूटरी रिकग्नाइज्ड केन्टीन की परिभाषा में आता है जैसा माननीय उच्चतम न्यायालय ने अपने निर्णय के पैरा सं. 12, 14, 16 व 29 में अभिनिर्णित किया है। यह निर्णय इस प्रकरण में संपूर्ण रूप से प्रभावशाली है जिनमें मैं इन निष्कर्ष पर पहुंचता हूँ कि पश्चिमी विवादप्रत केन्टीन/टिफिन रूम बिना-उप मण्डल अधिकारी (तार) कार्यालय में चलाई जा रही थी जो नो रिक्रियेशन क्लब का स्थाई अध्यक्ष होता था तब उच्चतम न्यायालय के निर्णय के परिप्रेक्ष्य में प्रदर्शित डब्ल्यू.-1, 2, 3 और प्रदर्शित एम.-1, 2 व 3 के आधार पर यह अभिनिर्णित किया जाता है कि श्रमिक विपक्षी के अधीन नियोजन में था और इस प्रकार श्रमिक तथा विपक्षी के मध्य कर्मकार व नियोजन का संबंध स्थापित हो गया था। फलस्वरूप यह बिन्दु सकागमक रूप में नया श्रमिक के पक्ष में अभिनिर्णित किया जाता है।

बिन्दु सं. 2

11. श्रमिक ने यह कथन किया है कि वह 1-12-83 को नियुक्त हुआ था और 15-9-84 तक लगातार कार्यरत रहा। यह तथ्य सिद्ध है कि श्रमिक ने लगातार कार्य किया ऐसी स्थिति में यह स्वयं स्थापित हो जाती है कि श्रमिक ने 240 दिनों में अधिक कार्य करते हुए प्रोद्योगिक विवाद अधिनियम के अन्तर्गत संरक्षित कर्मकार का पद प्राप्त कर लिया था। फलस्वरूप विवाद न होने से यह बिन्दु श्रमिक के हित में हनी प्रकार अभिनिर्णित किया जाता है।

बिन्दु सं. 3

12. इस प्रकरण में यह भी स्वीकृत स्थिति है कि श्रमिक को सामान्य पत्र द्वारा 15-9-84 का सेवामुक्त किया गया इस पत्र में वेदा मुक्ति का कोई कारण नहीं दर्शाया गया है। जहाँ श्रमिक ने 240 दिनों में अधिक कार्य कर लिया है तो वह प्रौद्योगिक विवाद अधिनियम के प्रावधानों का संरक्षण प्राप्त कर लेता है। ऐसा श्रमिक द्वारा 2(10) के प्रावधानों से परे जाकर सेवा मुक्त किया जाता है तो उक्त यह सेवामुक्ति अन्य कुछ नहीं अपितु छंटी है जैसा मोहननाथ बनाम मैनेजमेंट ऑफ सैलर्स भारत इलेक्ट्रोनिक्स लि.-1981 नई आई. सं. 806 व पंजाब लेबर वेक्लपमेंट एंड रीक्लेमेशन कॉर्पोरेशन बनाम प्रेजार्डिड आफिसर नेबर कोर्ट बंडीगढ़ 1990 यू.जे (एस. सी.) 293 में अभिनिर्णित किया गया है।

13. फलस्वरूप यह स्पष्ट है कि श्रमिक को दिनांक 15-9-84 को सेवामुक्त करना “छंटी” है ऐसी छंटी करने से पूर्व नियोजन ने यह अपेक्षा थी कि प्रौद्योगिक विवाद अधिनियम का धारा 23-एफ (ए) और (बी) के प्रावधानों को अनुपालन करने हुए उसे नोटिफा किया दिवस सेतन और छंटना भुषानजा दिया जाता, ये प्रावधान अविवेकात्मक हैं। यह भी अपेक्षा है कि धारा 25-एफ (सी) के अंतर्गत सूचना सूचना सरकार को दी जाय। धारा 25-ज. के अंतर्गत नियम 77 के अनुसार में पालना करते हुए पहले धाये पीछे जाये के विज्ञापन का भी अनुपालन हो जाय। प्राचीन ने इन संबंध में स्पष्ट साक्ष्य प्रदान किया है और इन तथ्यों

को विचार नहीं किया गया है। निरोद्ध माका अलिल कुमार सक्सेना एम. डब्ल्यू-1 ने यह स्वीकार किया है कि श्रमिक को कोई नोटिस नहीं दिया तथा छंटनी का नुप्रायजा नहीं दिया ऐसा दिवस में न केवल धारा 25-एफ (ए) व (बी) अपितु 25-जी. के प्रावधान का उल्लंघन किया जाता सिद्ध है। औद्योगिक विवाद अधिनियम के इन अधिशेषात्मक प्रावधानों के उल्लंघन स्वरूप यह छंटनी दूषित है व अपास्त किये जाने योग्य है। यह विन्दु इन्हीं प्रकार श्रमिक के हित में अभिनियमित किया जाता है।

विन्दु सं. 4

14. उपर्युक्त विन्दुओं के निष्कर्ष से यह स्थापित होता है कि श्रमिक एवं विपक्षी के तथ्य कार्यकार तथा नियोजक का संबंध है और श्रमिक ने 240 दिवस से अधिक कार्य किया है तथा उसकी सेवा मुक्ति छंटनी के रूप में कानून द्वारा नियोजक ने औद्योगिक विवाद अधिनियम का अनुपालन नहीं की जिसने यह छंटनी अव्यक्त है और वास्तव में जारी योग्य है जिसके परिणामस्वरूप श्रमिक पुनः पदस्थापना तथा निरोद्ध सेवा प्राप्त करने का अधिकारी है।

15. किंतु 15-9-84 को सेवा मुक्ति का यह विवाद सहायक अन प्रायुक्त (बेम्प्लाय) जयपुर के माध्यम से सनस्रोत अधिकारी के समक्ष 5-11-86 को उठाया गया था, जैसा श्रमिक ने अपने कावे के पैरा सं. 7 में उल्लिखित किया है। विवाद उठाने में हुए विनिम्न काल का श्रमिक कोई वेतन प्राप्त करने का अधिकारी नहीं रहता है। इसके अतिरिक्त पिछला वेतन भित्ति दिया जाये यह एक जटिल प्रश्न है। सामान्यतया जहाँ पिछले वेतन की मांग अधिक हो अथवा जहाँ समयकाल अधिक हो। गया हो वहाँ ऐसा पिछला वेतन बिलाया जाता हो तो वेतन में से कुछ टुकड़े काटे जा सकते हैं। वेतन में से ऐसा कटौती किया जाना गुजरात स्टील इन्डस्ट्री लि. बनाम गुजरात स्टील मजदूर संघ व अन्य 1990 लेब. प्रार्थी. 1004 उच्चतम न्यायालय ने जटिल परिस्थितियों पर आधारित तथ्य होना वर्णित किया है, उच्चतम न्यायालय ने इस मामले में इन सभी तथ्यों को विवेचित करते हुए इस उपधारणा को भी उजागरा है कि श्रमिक ने वैकल्पिक कार्य किया होगा और कुछ श्रमिकों को 50 प्रतिशत और कुछ श्रमिकों को 75 प्रतिशत पिछला वेतन दिलाया जाना उपयुक्त पाया था। तानवीय उच्चतम न्यायालय के इस निर्णय को सावर ग्रहण करते हुए मैं यह उपयुक्त समझता हूँ कि इस प्रकार के भ्रंशान श्रमिक को 5-11-86 में पिछला वेतन 75 प्रतिशत बिलाया जाए।

16. अतः इस प्रसंग को उत्तरित करते हुए निम्न प्रकार पंजाट पारित किया जाता है:—

1. श्रमिक रवि कुमार भाटिया की दिनांक 15-9-84 से सेवाएं समाप्त करने की कार्यवाही उपयुक्त एवं न्यायोचित नहीं है जो अपास्त किये जाने योग्य है।

2. श्रमिक 15-9-81 से ही पुनः पदस्थापित होने और सेवा में निरंतरता बनाये रखने का अधिकारी है।

3. विवाद उठाने में हुए विनिम्न काल यानि 15-9-84 से 5-11-86 तक का श्रमिक पिछला वेतन प्राप्त करने का अधिकारी नहीं है।

4. श्रमिक 5-11-86 के पर्याप्त 75 प्रतिशत पिछला वेतन प्राप्त करने का अधिकारी है।

उपर्युक्त पंजाट प्रकाशनाय केन्द्रीय सरकार को भेजा जावे।

17. प्रकाश प्राप्त दिनांक 3-8-91 को नरे इजलास विचार्य व पुनर्दि गई।

पी. एस. शुक्ला,
न्यायाधीश

श्रीमानावर प्रौद्योगिक विवाद अधिकारी
[सं. एन-10012/3 33-बी 2(के)पार्ट]

नई दिल्ली, 31 अक्टूबर, 1991

का. प्रा. 2930:—प्रौद्योगिक विवाद अधिनियम, 1947

(1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार महानगर टेलीफोन निगम लिमिटेड, नई दिल्ली के प्रमुख के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निरोद्ध औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिभरण, नई दिल्ली के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार का 30-10-91 का प्राप्त हुआ था।

New Delhi, the 31st October, 1991

S.O. 2930.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mahanagar Telephone Nigam Ltd. New Delhi and their workmen, which was received by the Central Government on 30-10-91.

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 58/91

In the matter of dispute between :

Shri Roshan Lal,
through Upadhyaksh,
All India Engineering and General Mazdoor Union,
L-127, Karampura, New Delhi-110015.

Versus

General Manager,
Mahanagar Telephone Nigam Limited,
Khurshid Lal Bhawan,
Janpath, New Delhi-110001.

APPEARANCES.—None.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-40012/150/90-I.R. (D.U.) dated 19-4-91 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the General Manager, Mahanagar Telephone Nigam Limited, New Delhi in terminating the services of Sh. Roshan Lal w.e.f. 31-1-87 is justified and legal? If not, to what relief the workman is entitled?”

2. The workman did not appear in this case inspite of notices having been sent four times. Even registered notices were sent. AD. was received but nobody appeared on behalf of the workman. It appears that neither the workman nor Union was interested in following the case further. I, therefore, pass No Dispute award in this case.

September, 9, 1991.

GANPATI SHARMA, Presiding Officer
[No. L-40012/150/90-I.R. (DU)(P.)]

का. प्रा. 2931:—प्रौद्योगिक विवाद अधिनियम, 1947

(1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार सर्वमहंत ग्राफ इन्डिया प्रैस के प्रमुख के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निरोद्ध औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिभरण, चंडीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-10-91 को प्राप्त हुआ था।

S.O. 2931.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation

to the management of Govt. of India Press and their workmen, which was received by the Central Government on 28-10-1991.

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER,
CENTRAL GOVT., INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No. I.D. 151/89

SURINDER KUMAR

Vs.

Govt. of India Press.

For the workman.—Workman in person.

For the management.—Shri Baldev Singh.

AWARD

Central Govt. vide gazettee notification No. L-16012/1/86-D.II(B) dated 20th September 1989 issued U/s. 10(1)(d) of the I.D. Act 1947 referred the following dispute to this Tribunal for decision :

"Whether (I) Shri Surinder Kumar is entitled to regain his seniority position which was enjoyed by him earlier prior to his termination and (II) whether the management was just to fix his pay at initial of the time scale on his reinstatement in pursuance of orders passed by the Hon' Tribunal in its Award dated 10-7-87 in case No. 64/86 ? If the answer to the first question is in the affirmative and to the second question, is in the negative, to what relief the workman concerned is entitled to ?"

2. The claim set out in the claim statement is that he was appointed as compositor in the year 1963 with the respondent and was confirmed on 1-7-1966. Further his seniority was fixed just after Shanti Sarup and before Shri Rishi Dev. It was further alleged that his services were terminated which was set aside vide Award dated 10-7-1987 in which the termination order of the workman was held to be bad. It was also alleged that he was placed on the same post as he was before his termination in the year 1978. It was further alleged that after the Award he was not allowed to join duties and ultimately he was allowed to join on 13-1-1988. He made request to the respdt. management to fix his seniority but no result and the management only allowed his initial pay to him without any criteria and the basis. It was alleged that he has been deprived of his seniority except he has been promoted to grade I without fixing his seniority which should have been allowed to him at the very first instance and has prayed for the direction to the management for the fixing of his seniority presuming that he was never suspended as the order of termination has been held void and bad and his pay be ordered to be fixed as per the scales which were being drawn prior to his suspension taking his scale as basis for the fixation of pay.

3. Case of the petitioner was contested and reply was filed. Stand was taken by the respdt. management is that the petitioner is not entitled for any due from the management. Further stand was taken that the Award of the Court was fully implemented and the claim of the workman is wrong and denied. It was further pleaded that since the petitioner had not made any reference for more than six years he can not claim any seniority. It was further pleaded that the promotion as per rules applicable is made after trade test to which the petitioner has not qualified, and the question of promoting him from the very beginning does not arise. It was further stated that as per provisions of Section 27-B of the I.D. Act 1947 he was entitled to salary the rate last drawn by him at the time of removal from service. Further the stand was taken that the Award was published on 15-8-1987 and became enforceable after 30 days of publication and thus entitled for wages from 14-9-1987 to 12-1-1988 and not from 28-8-1987 to 12-1-1988. Further stand was taken that the period from 27-3-78 to 14-8-87 is to be treated as dispute for which no specific order was passed by the Tribunal.

4. Replication was also filed reiterating the claim in the claim statement.

5. Petitioner in support of his case filed his affidavit Ex. W1 and produced himself as WW1 and placed reliance on documents Ex. W2 to W10. The respdt. management produced Shri Baldev Singh UDC as MW1 who tendered his affidavit in evidence as M1.

6. I have heard both the parties and gone through the record and evidence. Both parties have filed written arguments. The case revolves interpretation of the Award Ex. W2. According to the management since back wages have been denied to the petitioner from the period 27-3-1978 to 14-9-87 therefore, this period should be treated as dies-non and the petitioner is not entitled to any relief in absence of any specific order. I have perused the Award Ex. W2. Relevant paras 9 and 10 of the award is reproduced as under :—

para (9) "Now the next question is as to what is the effect of the reference being stale. It is true that workman was removed from service in March, 1978. He did not move for reference which was raised on 6-11-1984 i.e. after lapse of 6 years so reference is stale. I am of the view that re-instatement should not be refused on this ground and effect can be that claim of workman for back wages should be refused on this ground. So workman is held to be entitled to reinstatement without any claim for back wages.

10. As a result of my above discussion, it is held that order of termination is void and bad. He is entitled to reinstatement without any backwages. In a way reference is answered in favour of the workman."

7. After perusing the Award which has been denied to the workman is the backwages for the reasons that the reference was raised after a lapse of 6 years and ordered the re-instatement of the workman. His order of termination was declared as void and bad. So therefore, keeping in view that the order of termination was declared void and bad and the petitioner was given reinstatement, he is entitled to all the consequential reliefs and benefits including seniority etc. claimed in the reference minus the back wages for the period stated above. Reference is answered accordingly.

Chandigarh.

ARVIND KUMAR, Presiding Officer

[No. L-16012/1/86-D.II (B) (Prt.)]

का. प्र. 2932 :—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार महानगर टेलीफोन निगम लिमिटेड के प्रबन्धतंत्र के संस्था नियंत्रकों और उनके कर्मचारियों के बीच, अनुसूचन में निश्चित प्रौद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक अधिकरण में 1 दिसम्बर के संवत् को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-10-91 को प्राप्त हुआ था।

S.O. 2932.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1 Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mahanagar Telephone Nigam Ltd., and their workman, which was received by the Central Government on 28-10-1991.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I AT BOMBAY
(PRESIDING OFFICER : JUSTICE S. N.
KHATRI)

REFERENCE NO. CGIT-5 OF 1987

PARTIES :

Employers in relation to the management of
General Manager, Mahanagar Telephone
Nigam, Ltd.,

AND

Their workmen

APPEARANCES :

For the Bombay Telephone Co-operative Can-
teen Society Limited. : Mr. S. C. Naidu,
Advocate.

For the Mahanagar Telephone Nigam Limited :
Mr. Lavande, Clerk.

For the Workmen. : Mr. Bhat.

INDUSTRY : Telephones.

STATE : Maharashtra.

Bombay, dated the 18th day of October, 1991.

AWARD PART-II

11. This is further to Part I of the Award made by my learned predecessor Justice Jamdar on 30th June, 1989. He has held that the Mahanagar Telephone Nigam Limited (hereafter 'the Nigam') is a necessary party and will be bound by the final Award (para 9 of the Award). In para 10 he has held that the services of the 7 Workmen were terminated by way of disciplinary action for misconduct and that the termination order was not sustainable because it was made without holding any enquiry. He has further ruled that the Society (Bombay Telephone Co-operative Canteen Society Limited) and the Nigam would be entitled to lead evidence before the Tribunal to substantiate the charges levelled against the 7 workmen. The society and the workmen have since adduced evidence before me on the charges of misconduct as well as the issue of back wages. As Justice Jamdar has already stated the respective cases of the parties in Part I of the Award, I will not repeat the same again. The issue that now arise for adjudication are stated below with my findings thereon.

Issues	Findings
1. Is the Reference bad for the reason that the dispute is not an industrial dispute ?	The reference is not bad.
2. Is the reference liable to be rejected for the reason that the Workmen did not prosecute domestic remedies of appeal and review ?	No.
3. Are the Workmen (except Jagannath Shetty) not	This is no ground by itself to refuse relief

Issues

Findings

- entitled to any relief for the reason that they have not given their evidence before the Tribunal ?
4. Was the Society entitled to terminate the services of the 7 Workmen without holding any enquiry for the reason that they had voluntarily abandoned their jobs?
5. Whether the Nigam are also liable as Employers of the Workmen ?
6. Which of the charges, if any, are duly proved and against which Workmen ?
7. Are the Workmen entitled to reinstatement ?
8. What order about back-wages ?
9. Relief and Casts
- Th: Workmen did not voluntarily abandon their jobs.
- They are liable.
- Charge No-1 against all the Workmen.
- Yes.
- Sell last para.
- See last para.

12. The Society has examined five witnesses whose evidence I shall advert to in due course. The Nigam has adopted this evidence. The Workmen have examined four witnesses. All the three parties have filed written submissions and supplemented them orally also. The Nigam have by and large adopted the submissions of the Society, apart from denying their liability on the ground that they are not Employers of the Workmen.

REASONS FOR FINDINGS

13. Issue No. 1 : The Society relies on the decision of the Supreme Court reported in 1957 1 I.L.J. p. 27 Central Provinces Transport Ltd. Vs. Raghunath Patwardhan for the submission that the present dispute is not an industrial dispute within the meaning of section 2(k) in the Industrial Disputes Act (hereafter 'the Central Act'), for the reason that it relates to individual Workmen only and a substantial number of Workmen have not espoused their cause. I am afraid the decision does not help the Management at all. In the first place, the matter before the Supreme Court arose under the Central Provinces and Berar Industrial Disputes Act, which contained an express provision in Section 16 that a dispute relating to an individual employee could also be entertained by Industrial Tribunal. Then after the insertion of section 2-A in the Central Act in 1965, the Management cannot simply raise the submission. Without dialating further, I overrule their objection.

14. Issue No. 2 : The objection raised in this issue is also without any substance. No provision of law is cited before me, which obligates Workmen to exhaust all domestic remedies as a condition precedent to industrial adjudication. This issue is also answered in the negative.

15. Issue No. 3 : It is true that of the seven Workmen only Jagannath Shetty has entered the witness box before this Tribunal. Again there is no warrant for the Management's proposition that a Workman must necessarily give his evidence in a domestic inquiry or in the course of industrial adjudication. Indeed the Management have not adduced any evidence on any of the numerous charges, except charge No. 7, which are extracted in para 18 infra. It will be for the Tribunal to weigh evidence of both sides and decide whether it was necessary for all or any of the remaining 6 Workmen to rebut the evidence. Law as such does not obligate every Workman to enter the witness-box. I return a negative finding on this issue.

16. Issue No. 4 : There is also no force in the submission of the Management that they were entitled to terminate the services of the 7 Workmen for the reason that they had voluntarily abandoned their jobs. It is the case of the Management themselves that had prepared exhaustive chargesheets against the 7 Workmen, which are reproduced in para 18 infra. Having taken this stand long back that the termination of Workmen's services was for their misconduct, it is now too late in the day for them to turn about and contend that the termination was a consequence of voluntary abandonment of their jobs by the Workmen. Justice Jamdar has given reasons in para 10 of his Award for holding that a departmental inquiry was necessary. I am in respectful agreement with those reasons. Even the evidence negatives the belated contention of the Management that the Workmen had voluntarily abandoned their jobs. Jagannath Shetty states that the Workmen had tried to go to the place of work on 25-9-1982 and following days ; but the Management did not allow them access. The documents filed by the Workmen show that as early as 5th October, 1982 their Union had demanded their reinstatement by writing letters to the Society as well as the General Manager of the then Bombay Telephones (Ex. W-5 & W-6). The Union continued their efforts relentlessly by addressing letters to the Labour Commissioners of the State and the Central Governments from 1983 to 1985. Ultimately the matter was taken up in conciliation in April, 1985 by the Labour Commissioner (Central). These documents are at Ex. W-7 to W-12. As the Management did not turn up the conciliation proceedings ended in failure, culminating in the present Reference by the Central Government. All this evidence negatives the possibility of voluntary abandonment of jobs by the Workmen. find this issue in the negative.

17. Issue No. 5 : Apart from the reasons given by Justice Jamdar in para 9 of his Award for his finding that the Departmental Canteen Committee is not a separate legal entity, but is only an agent of the Nigam who are the real Employer of the Canteen Workmen (reasons with which I respectfully concur), there are further materials placed by the Workmen on record which practically clinch this issue in their favour. The Department of Personnel and Administrative Reforms in the Ministry of Home Affairs have issued detailed instructions on running of Departmental Canteens in Government Offices and Industrial Establishments. The compilation is at Ex. S-8 Para 1.2 of these instructions defines a 'Departmental Canteen'. The proviso states in so many words, "a

canteen managed by a Co-operative Society of Government employees with the Head of the Department/Office or his nominee as its Chairman, will also be taken as a Departmental Canteen". Para 5.3 refers to the Government of India Notification No. 6(2)/23/77-Welfare (Canteens), dated 11th December, 1979, which declares the employees of Departmental Canteens as holders of civil posts in connection with the affairs of the Union. Para 5.2 provides that the conditions of service and recruitment rules for the Employees of Departmental Canteens, with effect from 1st October, 1979, consequent to their gaining the status of holders of civil posts shall be those as framed under the proviso to article 309 of the Constitution. It is further clarified that employees of Canteens run by Co-operative Societies shall also be governed by these provisions in conjunction with the bye-laws of the Society and the local Co-operative law in force. As if to dispel any doubt that might still lurk, Paragraphs 6.11 provides that the Managing Committee shall function "for and on behalf of the President of India". The conclusion is inescapable that the Nigam and their predecessor Bombay Telephones must be deemed to be the real Employers of the Canteen Employees right since 1st October, 1979, notwithstanding that it was the Society or the Managing Committee who were looking after the day to day Management of the Canteen. I hold that the Nigam are also liable as Employers and are bound by this Award.

18. Issue No. 6 : Ex. S-1 to Ex. S-7 are the chargesheets, alleged by the Society to have been framed against the seven Workmen. The first 7 charges are identical for all the Workmen. There are 3 more charges (No. 8, 9 & 10) against Workman Satish Hegde alone. It will therefore be enough to reproduce below the chargesheet (Ex. S-1) relating to Satish alone :—

- "1. On 23rd September, 1982 you unauthorizedly left your place of work, i.e. you absented from your work place without permission and intimation from 2.30 P.M. onwards.
2. On 23rd September, 1982 thereafter at about 3.30 P.M. you alongwith other employees of the Canteen Society brought a morcha to the registered Office of the Society at Telephone Complex, Parel P. O. Lane, Bombay-400 012. You were also accompanied with outside goondas elements. You alongwith the others had brought the morcha with a view to terrorise the Joint Hon. Secretaries who work in the Telephone Complex, Parel. You alongwith the others shouted filth and abuses and vulgar slogans in front of the offices at the Telephone Complex. So also threatened the Joint Hon. Secretaries with dire consequences.
3. On 23-9-1982 when you came to know that the Joint Hon. Secretaries were not present inside the premises of the Telephone Complex you unauthorizedly entered the office premises at the Bombay Telephones where the Secretaries work and enquired from

- their office colleagues the residential addresses of the two Joint Hon. Secretaries. You alongwith the others then left the office and went to the Canteen in Parel Telephone Complex and continued to remain there unauthorizdly upto 7.00 P.M.
4. On 24-9-1982 you alongwith the other employees working in various canteens of this Co-Op. Society and outside goondas elements brought a morcha at about 12.00 noon at the Parel Telephone Complex. You and others shouted vulgar and abusive slogans against the Managing Committee. You also attempted to enter the premises of the Telephone Complex but you were prevented by the Security Officials and the Police on duty.
 5. On 24-9-1982 the Police in order to restore normalcy and peace in the area and in order not to affect the working of the Bombay Telephones offices situated in Telephone Complex called you and others to have dialogue with Shri C. A. Hawre, the Joint Hon. Secretary who were present in the Telephone Complex. At the meeting you turn belligerent and rushed at Shri C. A. Hawre in order to assault him. Due to the timely intervention of the Police Officer on duty Shri C. A. Hawre escaped being assaulted by you. You then left the meeting and incited the Workmen of other canteens and outsiders to assault Shri C. A. Hawre. The Police therefore escorted Shri C. A. Hawre and took him outside the Parel Telephone Complex.
 6. On 25-9-1982 at about 2.00 P.M. you unauthorizdly i.e. without prior permission and/or intimation left your canteen and lead the morcha of employees of this Society employed in various canteens to the Fountain Telecom Building, M. G. Road, Bombay-400 023. It was noticed that in the said morcha there were a large number of outsiders including many goonda elements. You alongwith your heirlings blocked the main entrance of the Fountain Telecom Building which is prohibited area and shouted filthy and vulgar and abusive slogans against the Chairman and other Office bearers of this Society. Due to your above acts the working in Fountain Telecom Building was disturbed. You continued the demonstrations in front of the Fountain Telecom Building on that day upto 5.00 P. M.
 7. On 27th September, 1982 you unauthorizdly absented yourself and at about 12.00 noon with a view to coerce the Management of this Society brought a huge morcha at the Fountain Telecom Building, M.G. Road, Bombay-400 023 and a large number of outsiders were observed in the said morcha. At about 1.30 P. M. when the Area Manager (L/D), Bombay Telephones who is also the Chairman of this Society came out of the Building for his lunch you instigated and incited the demonstrators to "Gherao" him. The Area Manager (L/D) with the help of the Security was however able to reach his vehicle. As the Area Manager was entering the vehicle you pushed as jostled the Area Manager (L/D) and the Chairman of the Society and in the melle his spectacles were pulled out. As the situation as taking a turn for the worst, the Security covered the Area Manager (L/D) and the Chairman of the Society and in the melle his spectacles were pulled out. As the situation as taking a turn for the worst, the Security covered the Area Manager (L/D) and you alongwith the other demonstrators assaulted the Security Jamadar first with blows and the kicks. The Area Manager (L/D) however, with the assistance of the Security and Police Constables on duty who by then entered his vehicle. You alongwith others then surrounded the vehicle and started kicking the vehicle due to which several dents were caused. You also alongwith other raised filthy and abusive slogans and subjected the Area Manager (L/D) to mental torture. The Area Manager (L/D) was then rescued by the police force which arrive at the spot.
 8. On 24-9-1982 at about 1.00 P.M. you prevented Shri C. D. Korgaonkar, Clerk of the Canteen Society while he was leaving the main gate of the Parel Telephone Complex and abused him in the most filthy language.
 9. On 24-9-1982 at about 1.05 P.M. you slapped Shri C. D. Korgaonkar Clerk of the Canteen Society, on his face infront of the main gate of the Parel Telephone Complex, for lodging a complaint with the Management in respect of the incidents which took place on 9-8-1982 in the Fountain Telecom Building.
 10. On 9-8-1982 at about 3.00 P.M. you rushed at Shri C. D. Korgaonkar, the Clerk of the Society, who had come to the Fountain Telecom Building, to disburse wages to the employees of the Society. You attempted to assault Shri C. D. Korgaonkar but you were prevented by your co-employees. You then threatened Shri C. D. Korgaonkar with fatal assault.
 11. Your above acts of Commission and Commission, whether along or in combination and concert, amount to the following grave misconducts for which you are hereby charged with :—
 - (a) Riotous, disorderly and indecent behaviour.
 - (b) Instigating, inciting and actively advising Co-Employees to desert/refuse/stop work and participate in illegal demonstrations.

- (c) Staging, encouraging unauthorized demonstrations in prohibited area.
- (d) Unauthorizedly absenting/leaving the place of work.
- (e) Unauthorized absenteeism.
- (f) Refusal to accept Office communication/order when served.
- (g) Stempting to assaulting the Members of Managing Committee, Clerical and office staff and co-employees of the Society.
- (h) Abusing the Managing Committee Members and office staff of the Society.
- (i) Threatening the Members of Managing Committee and clerical staff with threats of fatal assault and dire consequences.
- (j) Unauthorizedly entering the canteen premises inspite of orders to the contrary.
- (k) Refusal of a lawful and reasonable order of the superior.
- (l) Commission of acts subversive of discipline and good behaviour within the premises of the Society's establishments."

19. The Society have adduced evidence only on the first and the seventh charge. There is no evidence whatever on the remaining Charges (that is to say charge No. 2, 3, 4, 5 and 6 common for all the seven Workmen, and additional Charge No. 8, 9 and 10 for Satish Hegde). Accordingly I hold that these charges remain unproved. I now proceed to Charges 1 and 7.

20. Charge No. 1 :—The Management have not led any evidence on this charge. However Workman Jagannath Shetty Ex. WW-2 admits that the seven Workmen left the Canteen premises on 23-9-1982 at 1 P.M. without taking regular permission of absence from the Manager. According to him, they had only informed the Manager on the previous day about their intention to close the Canteen on the 23rd in the afternoon. These admissions have come in paragraphs 12 and 13 of his cross-examination. It appears that the Workmen had on that afternoon gone to the Fountain Telephone Office for staging a peaceful demonstration. Relying on Jagannath's admission I hold that this charge stands proved against all the 7 Workmen.

21. Charge No. 7 :—Both sides have concentrated on this charge, which obviously is the most serious one. On behalf of the Management are examined, Virendra Kumar Ex. SW-3 who was posted as Area Manager (Long Distance) at the material time, Hasa Ram Thorat Ex. SW-1 Watchman at the Fountain Telephone Office and Mane, Ex. S-1, Driver to Virendra Kumar. In rebuttal, Workman Jagannath Shetty Ex. WW-2 has entered the witness box. The evidence of Thorat and Mane is to the effect that at about 1 P.M. on 27-9-1982, Thorat received a message from the Personal Assistant of Virendra Kumar that the latter was coming down to go home for lunch. On receiving this message through Thorat, Mane brought the Jeep to the Porch of the Building and parked it there. It appears that there is a flight of about a dozen of steps between the Chamber of Virendra Kumar and the Porch.

The Watchman and the Driver states that about 12-15 Canteen Employees who were squatting on the steps Gheroad Virendra Kumar as he came down from his Chamber, and gave him fist and kick blows. The employees also used abusive language. The Watchman managed somehow to escort Virendra Kumar to the door of the Jeep with the help of a Police Constable on duty. Mane adds that after getting into the Jeep, Virendra Kumar told him to convey to the agitating employees that he had not received their demand charter and that he was ready to discuss their demands on receipt thereof. Mane managed to pass on this message to the demonstrators through the good Offices of one Police Inspector. The demonstrators allowed the Jeep to go away after holding it up for about 20 minutes. Virendra Kumar has substantially deposed to these facts, subject to the variation that the incident had occurred on 25th September and not on 27th. He has also given the names of the Workmen. In rebuttal Jagannath Shetty says that they did not go to the Fountain Telecom Building at all on 27th or 25th. According to him the workers had gone there on 23rd only for a peaceful demonstration.

22. There are a number of serious lacunae in the evidence of the Management, in the face of which it is not possible to accept their evidence. The first major discrepancy is with regard to the date of the incident. Thorat and Mane throughout stick to 27th, which also finds place in the charge-sheets while Virendra Kumar gives it as 25th. Neither Thorat nor Mane knew the names of any of the miscreants, although both of them affirm that they can identify them by face. Virendra Kumar who has given the names of the miscreant Workmen, admits in cross-examination that he did not know their names personally and came to know them from Thorat, Mane and other members of his staff. Thorat and Mane falsify him on this aspect, when they concede that neither the Police nor any one else ever inquired from them the names of the miscreants. Here I may advert to the fact that Virendra Kumar had filed a complaint about the incident with the Police. But that was on 27th, that is, more than 48 hours after the incident which, according to him had taken place on the afternoon of 25th. Identification parade was never arranged by the Police during investigation. Nor did the Management show any eagerness to request the Tribunal to ask the eyewitness to identify the errant Workmen during the course of trial. All these factors make it difficult for one to accept the evidence of the Management.

23. Here we may also take note of the fact that all the accused who were tried for the alleged incident have been acquitted by the learned Magistrate. Neither Mane nor Thorat was tendered as a witness before the Magistrate. The Police Inspector who is said to have intervened in the incident was a material witness. So also the Police Constable who had escorted Virendra Kumar to the door of the Jeep. Neither of them is examined before me. To cap this all, Thorat admits in para 6 of his cross-examination that the Workmen had only gheraoed Virendra Kumar and not assaulted him. I do not think it necessary to dilate further. The Management have miserably failed to prove this charge.

24. In sum, the only charge that stands proved is Charge No. 1, namely that the 7 Workmen had absented themselves from work in the Canteen on the afternoon of 23rd September, 1982 without permission of the Manager. The rest of the charges remain unproved. This disposes of Issue No. 6.

25. Issues No. 7 and 8 :—The only charge which stands proved is a very minor one. Termination of services would obviously be a disproportionately harsh punishment for it. The evidence shows that the Workmen were not being paid full wages by the Management since long as per directions of the Government, with the result that they were compelled to take to peaceful demonstrations. This is borne out by the evidence of Krishna Murthy WW-1, General Secretary of the Hotel Labour Union (Red Flag), Eknath Sawant Ex. WW-4, Joint Secretary of the aforesaid Union, Workman Jagannath Shetty Ex. WW-2 and Uday Hegde Ex. WW-3, another Canteen employee. Even on the basis that the absention from work on the afternoon of 23rd was for the purpose of holding a demonstration in front of the Telecom Building, too serious a view cannot be taken of the matter. Ends of justice will be squarely met, if the seven Workmen are deprived of one day's wages for absenting themselves from work on 23rd September, 1982 in the afternoon.

26. The evidence on the Workmen's side shows that the Management did not allow them to enter the Canteen premises after 25th September, 1982. This was evidently a vindictive action on their part. Indeed it has come on record that the Management have retained in service demonstrators other than the 7 Workmen, because they have offered apologies. The present Workmen refused to toe the line of their colleagues with the result they are deprived of employment. Considering all the circumstances of the case, I hold that all the Workmen would be entitled to reinstatement. They would also be normally entitled to full back wages, unless there be some special circumstances for any of them. There are such circumstances in the case of Satish Hegde, Jagannath Shetty and Umesh Hegde. I proceed to consider them.

27. So far as Satish Hegde is concerned, Anand Bangera Ex. SW-4 who has been working as Manager of C.S.D. Canteen states that since March, 1983 Satish Hedge has been working in his Canteen as a Bearer. This witness further states that Satish has received wages from him as prescribed for all Central Government Canteen. He put the present gross wages of Satish at Rs. 1300/- per month. Shri Bhat for the Workmen has not cross-examined him on this aspect. Anand Bangera's evidence which remains un rebutted will have to be accepted. It follows that Satish Hegde has been gainfully employed to date since March, 1983 and he still holds the job. This job could not be less remunerative than that of a Washer Boy he was holding under the Society. Accordingly it will be just to grant him back wages only upto the end of February, 1983. I wonder if he may be still interested in going back to his old job. His reinstatement will, therefore, be subject to his intimating his option to the Management by 1st February, 1992.

28. Concerning Workman Jagannath Shetty, the Society has adduced the evidence of Chandrakant Hawre Ex. SW-5, who is Hon. Joint Secretary of the Society from 1982. He states that Jagannath Shetty had told him two years ago that he was driving a Rickshaw in Jogeshwari. The Workman denies to have ever made such an admission to Hawre. In para 20 of his cross-examination he however admits that from September, 1985 he used to earn Rs. 12—15 per day and that since 1986 he has been on average earning Rs. 500/- per month. He denies the Management's suggestion that his average monthly income was Rs. 1200/- per month. At the instance of the Management this Workman has filed a xerox copy of his Saving Account with the Central Bank of India, Prabhadevi Branch (Ex. W14). It shows that in April-May, 1986 he had deposited Rs. 8000/- out of which he withdrew Rs. 7900/- in July of the same year, leaving a paltry balance of Rs. 155.40. In the following years there are no deposits at all, except small amounts ranging from Rs. 2/- to Rs. 5/- by way of interest. In the circumstances it is not possible to believe that Jagannath Shetty had made a fortune after termination of his services. I accept his testimony that he was earning Rs. 12-15 per day between September, 1982 and 1985 and Rs. 500/- per month thereafter. In the totality of circumstances, grant of 50% of back wages for the entire period shall meet the end of justice.

29. As regards Umesh Hegde, Chandrakant Hawre states that this Workman was working as a Waiter in United Pantry in Dalamal Chambers. The witness claims to have seen him working in the Pantry on 15th January, 1991 and again on 18th January, 1991 on which date his evidence was recorded before me. Hawre further states that the Manager of the Pantry one Shetty-told him that Umesh was getting Rs. 1300/- per month or so as wages. In cross-examination the witness admits that he did not know since when Umesh Hegde was working in the United Pantry : he has also not seen the record. Umesh Hegde has not entered the witness box. In absence of rebuttal, I will rely on the evidence of Chandrakant Hawre to the extent it goes. I hold that Umesh Hegde has been working with the United Pantry since 15-1-1991. As he appears to be since earning substantial wages, I hold that he will get back wages till 14th January, 1991 only at full rate and not thereafter. As regards reinstatement there is no evidence either way to know whether he would like to join back. Therefore as in the case of Satish Hegde he will have also to give his option by 1st February, 1992.

30. Now the last question about costs. I am sorry to note that the Management have all along taken an unreasonable stand against the seven Workmen. It is worthwhile to know that other five employees were taken back in service on their giving apology, although they were prosecuted before the Magistrate. In case of the present 7 Workmen, the Management insisted for similar apologies. As these Workmen felt that the Management was wrong in refusing them benefits extended to departmental Canteens by the Government, they did not think it necessary to give apologies. The Workmen cannot be faulted for staging peaceful demonstrations to get their legitimate demands fulfilled. It is now more than 9 years since they have been thrown out of

their jobs. In the circumstances I settle a sum of Rs. 3000/- by way of costs on the Management. Eventually I make the following Award :

31. The action of the Management in terminating the services of Satish Hegde, Jagannath Shetty, Sadanand Poojari, N. D. Naik, Surendra Gadigar, Umesh Hegde and Harichandra Bangera with effect from 25th September, 1982 is held to be illegal and unjustified. It is hereby set aside. The Mahanagar Telephone Nigam Limited, who are the present employers of the 7 Workmen are directed to reinstate them in their jobs. Satish Hegde and Umesh Hegde will be entitled to be reinstated, only if they inform the Nigam in writing on or before 1st February, 1992 their option to be so reinstated. The charge that the 7 Workmen had on 23rd September, 1982 absented themselves from their work without prior permission from 2.30 p.m. onwards, is held to be proved. The Management will be entitled to treat their absence on that day as leave without pay. Workmen Sadanand Poojari, N. D. Naik, Surendra Gadigar and Harichandra Bangera will be entitled to full back wages from 25-9-1982 till reinstatement. Satish Hegde will get full backwages from 25-9-1982 till the end of February, 1983 only. Jagannath Shetty will be entitled to half backwages from 25-9-1982 till his reinstatement. Umesh Hegde will get full backwages from 25-9-1982 till 14th January, 1991 only. It is further declared that the reinstatement of the Workmen will be with all service benefits without any break in service. The Society and the Nigam will pay Rs. 3000/- as costs to the Workmen and bear their own.

Award Accordingly.

S. N. KHATRI, Presiding Officer

[No. L-41011/17/85-D.II(B) (Pt.)]

का. या. 2933.- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे जबलपुर के प्रबन्धन के संक्षेप विवरणों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-91 को प्राप्त हुआ था।

S.O. 2933.--In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between employers in relation to the management of Central Railway Jabalpur and their workmen, which was received by the Central Government on 30-10-91.

ANNEXURE

BEFORE SRI V. N. SHUKLA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R) (179)/1987

PARTIES :

Employers in relation to the management of Central Railway, Jabalpur and their workman, Shri Mihilal Ramautar, Driver, New Katni Jn. C/o Shri Gajraj, Railway Quarter No. K-14, Mudwara, Katni Distt. Jabalpur (M.P.).

APPEARANCES :

For workman Shri K. Menon, Advocate.

For management Shri S. K. L. Mishra, Advocate.

INDUSTRY : Railways DISTRICT : Jabalpur (M.P.)

AWARD

Dated : October 21st, 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-41012/49/85-D.II(B) dated 2-9-1987, for adjudication of the following dispute :

"Whether the termination of Shri Mihilal Ramautar, Driver, New Katni Jn. vide Order dated 23-3-83 by the management of Central Railway, Jabalpur is legally in order and justified? If not, to what relief and from what date, the workman is entitled to?"

2. The workman was charged as follows and after departmental enquiry his services were terminated with effect from 23-3-83. He was serving as Driver with the management of Central Railway, Jabalpur at New Katni Junction.

"1. That the said Sri Mihilal Ramautar Ambulance Driver, while functioning as Ambulance Driver at NKJ Hospital during his duty from 15.00 hrs. to 22.00 hrs. on 27-3-83, unauthorisedly allowed 2 persons to occupy the Ambulance while was talking the same from NKJ to Katni Station.

2. That the said Sri Mihilal Ramautar during his duty from 15.00 hrs. to 22.00 hrs. on 27-3-83 unauthorisedly allowed Sri Bhagwandas S. Lala Toshare the Driver's seat along with him.

3. That, the said Sri Mihilal Ambulance Driver during this duty from 15.00 hrs. to 22.00 hrs. on 27-3-83, while taking the Ambulance No. MBK 232 as above drove it rashly and negligently as a result whereof the vehicle, Ambulance No. 232 dashed against an electric pole.

4. That the said Mihilal Ramautar Ambulance Driver handled and drove the vehicle in an irresponsible and careless manner resulting into injuries to occupants and damage to the vehicle".

3. This tribunal vide its order dated 29-11-90 held the departmental enquiry valid and proper. Thus the only point that remained open for argument was to hear the parties on the remaining issues i.e. Issue Nos. 2, 4 & 5. The issues framed were however as follows :—

ISSUES

1. Whether the domestic/departmental enquiry is proper and legal?

2. Whether the punishment awarded is proper and legal ?

3. Whether the management is entitled to lead evidence before this Tribunal ?

4. Whether the termination action taken against the workman is justified on the facts of the case ?

5. Relief and costs.

4. Issue Nos. 1 & 3 were decided by the above order. Issue No. 1 was decided in the affirmative and since the departmental enquiry was held proper and legal the question of management to lead evidence before this Tribunal did not arise. Now the remaining issues No. 2, 4 & 5 are to be adjudicated upon.

5. While considering these issues I will also consider the question of perversity of finding.

6. Having gone through the entire record and the documents of the D.E. File it is an undisputed fact that Mihilal Ramautar while functioning as an Ambulance Driver and doing his duty from 15.00 hrs. to 22.00 hrs. on 27-3-83 unauthorisedly allowed 2 persons to occupy the seat from NKJ. to Katni Station. Whether these persons were policemen or other persons is not a question to be adjudicated but the fact remains that they are not authorised to occupy the said vehicle. Those persons are B.R. Yadav, sub inspector (Fire) R.P.F. and Ram Sagar, HRK Driver who though in the preliminary enquiry had not only stated that the said Driver was driving the vehicle at a very fast speed of 90-95 kms. per hour but also driver seat was occupied by one more person viz. Bhagwan Das safaiwala. Here we are not dealing with case of Bhagwandas safaiwala who according to the enquiry officer was 'unauthorisedly missing' but despite the fact that these witnesses turned hostile in the departmental enquiry, the fact remains that as per premission of the workman himself these two persons were unauthorisedly allowed to occupy the Ambulance and Bhagwandas Safaiwala was occupying the part of his (Driver) seat.

7. This is also undisputed that some kilometers away the vehicle dashed against a Electric Pole causing injuries to the occupants at the Vehicle and the Vehicle was also damaged. These persons were also brought to the hospital and treated.

8. Workman's defence is that two cyclists were passing by from both the sides and while saving one of the cyclists he dashed against the Electric Pole. He has denied that he was driving the vehicle fast.

9. I have gone through the papers of preliminary enquiry as also the entire evidence on record and it can certainly not be said that the findings are perverse because he was assuming that it was an accident. The question arises why the Driver permitted other persons to occupy his seat which itself is a part of grave negligent in consequence of which a man can naturally lose control over the vehicle and meet with an accident. Even assuming that the case of the workman is true his negligence to the effect that he permitted another person to occupy his seat, sharing the seat of the driver with him would itself be sufficient enough to show that even in those circumstances he

could have saved the accident if he was driving the vehicle carefully.

10. It is needless to go into the details of the evidence. Suffice it to say that the Enquiry Officer has come to a proper conclusion on the basis of the material on record and in any case the finding cannot be said to be perverse. In such circumstances the Tribunal should be slow in interfering with the punishment, in the circumstances of the case where the Government property was damaged, three persons were injured and were brought to the hospital. These facts are sufficient enough to show the gravity of the misconduct of the workman concerned and no interference is called for. I accordingly hold as follows :—

1. The punishment is proper and legal.

2. Termination action taken against the workman is justified on the facts of this case.

3. Workman is not entitled to any relief.

11. Reference is accordingly answered as follows :—

Termination of Shri Mihilal Ramautar, Driver, New Katni In vide order dated 23-5-85 by the management of Central Railway, Jabalpur is legally in order and justified. He is not entitled to any relief. No order as to costs.

V. N. SHUKLA Presiding Officer

[No. L-41012/49/85-D.II(B) (Pt.)]

का. आ. 2914:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भावशा ब्यास मैनेजमेंट बोर्ड के प्रबन्धन के सबब नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 28-10-91 को प्राप्त हुआ था।

S.O. 2934.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhakra Beas Management Board and their workmen, which was received by the Central Government on 28-10-1991.

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

CASE NO. 91/87

Uggagar Singh Vs. Bhakra Beas Management Board.

APPEARANCES :

For the workman : Shri R. K. Singh.

For the management : Shri N. D. Kalra with C. L. Sarin.

AWARD :

Central Government vide gazette notification No. L-12011/86-Con. I/D, II(B) dated 28th September-1987 issued U/S 10(I)(a) of the I.D. Act,

1947, referred the following dispute to this Tribunal for decision :

"Whether the action of the management of Bhakra Beas Management Board in terminating the services of Shri Uggagar Singh son of Shri Tulsi Ram w.e.f. 1-1-1985 is legal and justified ? If not, to what relief the concerned workman is entitled to and from what date ?"

2. Case of the workman as set out in the claim statement is that he was enrolled as skilled mazdoor in January, 1984 in the Nangal Workshop Division against token No. 403 DL and till 31-12-1984 he had worked continuously in Bhakra Electrical Division as a Wireman on daily wage basis. It was alleged that the action of the management in terminating his services w.e.f. 1-1-1985 is wrong and baseless and violation of Section 25-F of the I. D. Act, 1947 as one month pay in lieu of notice and retrenchment compensation which is precondition to the retrenchment never paid to him. It was further alleged that after his termination Teja Singh, Milkhi Ram who were appointed on work charge basis w.e.f. 1-6-1985 by promoting them to wireman which is against the provisions of Section 25-H of the I. D. Act, and the judgement of the Hon. S. C. in which it has been held that the purpose of Section 25-H would foil if the promotions are accorded to the lower rank of the category from which the retrenched workmen are to be re-employed U/S-25-H of the I. D. Act. It was further alleged that number of persons in the category of menson has been retained in the service. It was further alleged that petitioner had rendered 299 days of service in 12 calander months and his services can not be terminated without complying of Section 25-F of the Act and prayed for reinstatement with full backwages.

3. The stand of the management is that workman was employed only for particular job and as soon as the job was over the appointment came to an end. Further stand was taken that since the workman was engaged against the temporary work which completed within a period of two years, petitioner is not entitled to any retrenchment compensation and Section 25-F is not applicable in the present case. It was further pleaded that Teja Ram and Milkhi Ram were promoted to the rank of wireman on 1-6-1985 and the provisions of Section 25-H are not attracted and sought the dismissal of the reference.

4. In support of his case the petitioner examined himself as WW-1 and filed his affidavit Ex. W-1 in evidence in which he reiterated the facts stated in the Statement of claim and he has denied the suggestion in cross-examination that he had worked against specific job on short duration. Respdt. management produced MW1 Sohan Singh SDO who filed his affidavit Ex. M1 in evidence and documents Ex. M2 showing number of days put in by Uggagar Singh workman from the period February, 1984 till December, 1984 and in affidavit he has admitted that the number of days put in by the workman are 245 days as contained in Ex. M2. In cross-examination he has admitted that no seniority list has been maintained for daily wage worker and they are employed verbally and terminated verbally. He has admitted that the petitioner was never charge sheeted. He has also admitted that Ex. W2 is the list of the person

of daily wage but he showed his ignorance of having them regularised.

5. I have heard both the parties and gone through the evidence and record. Rep. appearing on behalf of the workman has argued that the petitioner had completed 240 days in the preceeding year on the daily wages basis and no retrenchment compensation was given to him as provided U/S 25-F of the Act and thus there is violation. On the contrary the rep. of the management has argued that since the petitioner was employed against temporary work and that work was completed within two years and since his employment was for particular job so his case fall within the pervue of Section 25-FFF and Sub-Section (2) and not u/s. 25-F. The contention of the management is devoid of any merit for the simple reason that in order to attract Section 25-FFF Sub-Section 2 of the I. D. Act, 1947 there has to be closing down of the undertaking in which the retrenched employee had been working. But it is not so in the present case. The petitioner was duly appointed by the BBMB which is still existing unit. The main ingredient of Section 25-FFF, (The closing down of the undertaking) is missing in the present case and Section 25-FFF sub-section (2) is not applicable in the present case.

6. However Sohan Singh MW1 appearing on behalf of the management in his evidence has tendered Ex. M2 containing number of days. The petitioner had worked with the respdt. Management which comes to 245 days during the 12 months of service preceeding the date of termination. Admittedly no retrenchment compensation was given to him at the time of termination. Therefore, mandatory provision of Section 25-F of the Act was not complied before the termination of the service of the workman. The impugned termination is perse in violation of law.

7. In view of the facts discussed above and in the circumstances of the case, the petitioner Uggagar Singh is reinstated with continuity of service. The management has not alleged that the workman was gain fully employed during the above period. However seeing these circumstances it is ordered that the petitioner is entitled for full back wages. Reference is answered accordingly.

Chandigarh .

ARVIND KUMAR, Presiding Officer

[No. L-12011/86-Con.I/D. II(B) (Pt.)]

का. आ. 2935:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार पोस्ट एण्ड टेलीग्राफ अमरावती के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुसूचन में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-91 को प्राप्त हुआ था।

S.O. 2935.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Post & Telegraphs Amravati and their workmen, which was received by the Central Government on 30-10-91.

ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R) (67)/1988

PARTIES :

Employers in relation to the management of Divisional Engineer Telegraphs, Amravati and their workman, Shri A. C. Bhandarkar. Casual Labour, represented through the All India Telegraphs Engineering Employees Union, Line Staff and Class IV, Amravati-444602.

APPEARANCES

For Union.—Shri V. K. Sule.

For Management.—Shri P. V.S.T. Sai, Accounts Officer.

INDUSTRY : Telegraphs DISTRICT : Amravati (MS)

AWARD

Dated : October 14 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-40012/31/86-D.II(B) Dated 25th March, 1988, for adjudication of the following dispute :—

"Whether the action of the management of Post & Telegraphs Amravati, justified in not regularising the services of Sri A. C. Bhandarkar, Casual Labour under Asstt. Engineer Co-axial Amravati is justified ? If not, to what relief the employee concerned is entitled to ?"

2. Parties were noticed to file their respective statement of claim etc. Workman has filed his statement of claim. Management has also filed its statement of claim and an authority letter in favour of Shri M. H. Waghmare, Dy. Telecom District Engineer Amravati.

3. On 9-10-1991 the case was taken up at Nagpur at the request of the parties. Shri P.V.S.T. Sai, Accounts Officer presented an application dated 4-10-1991 duly signed by Shri A. C. Bhandarkar, workman concerned and Smt. S. D. Dallapurkar and V. M. Waghmare signed as witnesses. The workman in his application stated as under :—

"Since I have promoted as Group 'D' and now recently promoted as Wireman, I hereby withdraw my case No. R. 67/88."

4. Obviously the workman has no case now as he has been promoted as Group 'D' first and thereafter as Wireman, I record a No dispute award with no order as to costs.

V. N. SHUKLA, Presiding Officer
[No. L-40012/31/86-D.II(B) (P.)]

का. आ. 2936—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूची में, केन्द्रीय सरकार द्वारा कर्मशिल सचिव के प्रवचन के मध्य निवात्रको आर उनके कर्मकारों के बीच, अनुबध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्राधिकरण, नई दिल्ली के पक्षों का प्रकाशित करती है, जो केन्द्रीय सरकार का 30-10-91 का प्राप्त हुआ था।

S.O. 2936.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employer in relation to the management of Doordarshan Commercial Service and their workmen, which was received by the Central Government on 30-10-91.

ANNEXURE

BEFORE SHRI GANPAT SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 66/91

In the matter of dispute between Shri Bhim Rao through Shri Ram Kanwal, r/o F-70, Prem Gali, Kotla Mubarakpur, New Delhi-110003.

Versus

Manager

Doordarshan Commercial Service,
Asian Games Village,
Shree Fort, New Delhi-110049.

APPEARANCES :

None for the Workman.

Shri Radhey Sham Accountant of the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/164/90-I.R.(D.U.) dated 9-5-91 has referred the following industrial dispute to this tribunal for adjudication :

"Whether the action of the management of Doordarshan Commercial Service in terminating the services of Shri Bhim Rao w.e.f. 24-12-1988 is justified? If not, what relief the workman concerned is entitled to and from what date ?"

2. The workman did not appear, in this case on any date of hearing though notices were sent to him for 2-7-91, 6-8-91 and 16-9-91 by registered post. Since the workman has not appeared and the management has put in his appearance it appears that the workman is not interested in following his case further and I pass no dispute award in this case.
September 16, 1991

GANPAT SHARMA, Presiding Officer
[No. L-42012/164/90-IR(DU)(Pt.)]
K. V. B. UNNY, Desk Officer

नई दिल्ली, 4 नवम्बर, 1991

नई दिल्ली, 4 नवम्बर, 1991

का.प्रा. 2937.—खान अधिनियम, 1952 (1952 का 35) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार निम्नलिखित अधिकारियों को अगले प्रादेशों तक मुख्य खान निरीक्षक के अधीन खान निरीक्षक नियुक्त करती है :—

1. श्री निरञ्जन शर्मा
2. श्री दिनेश कुमार साहू
3. श्री विजय कुमार गुब्बा
4. श्री मेसाला नरसैया

[संख्या ए-12025/6/90-आई एस एच-1]
राम तिलक पाण्डेय, उप सचिव

New Delhi, the 4th November, 1991

S.O. 2937.—In exercise of the powers conferred by sub-section (1) of the Section 5 of the Mines Act, 1952 (35 of 1952) the Central Government hereby appoints the following officers as Inspector of Mines subordinate to the Chief Inspector of Mines, until further orders:—

1. Shri Niranjana Sharma
2. Shri Dinesh Kumar Sahu
3. Shri Vijaya Kumar Guboa
4. Shri Meesala Narsainh

[No. A-12025/6/90-ISH.I]
R. T. PANDEY Dy. Secy.

का.प्रा. 2938.—उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 15 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार भारतीय दूतावास, आबुधाबी में द्वितीय सचिव श्री कान्वलजीत सिंह सोढ़ी को सक्षम प्राधिकारी की शक्तियों का प्रयोग करने तथा उन नियोजकों, जो उक्त देश में रोजगार के लिए किसी भारतीय नागरिक की भर्ती के प्रयोजनार्थ भारतीय नागरिक नहीं है, को परिशुद्ध जारी करने के लिए प्राधिकृत करती है।

[संख्या ए-22020/1/91-उत्प्रवास]

जी के भट्टाचार्य, उत्प्रवास महामरक्षा तथा संयुक्त सचिव

New Delhi, the 4th November, 1991

S.O. 2938.—In exercise of the powers conferred by sub-section (2) of Section 15 of the Emigration Act, 1983 (31 of 1983), the Central Government hereby authorises Shri Kanwal Jit Singh Sodhi, Second Secretary in Embassy of India, Abu Dhabi to exercise the powers of Competent Authority and to issue permits to employers who are not citizens of India for the purpose of recruiting any citizen of India for employment in that country.

[No. A-22020/1/91-Emig.]

G. K. BHATTACHARYA, Protector General of
Emigrants and Jt. Secy.

